

**HEARING ON REVIEW OF VETERANS' DISABILITY  
COMPENSATION: UNDUE DELAY IN CLAIMS  
PROCESSING**

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**HEARING**

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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JULY 9, 2008  
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# C O N T E N T S

JULY 9, 2008

## SENATORS

	Page
Akaka, Hon. Daniel K., Chairman, U.S. Senator from Hawaii .....	1
Burr, Hon. Richard, Ranking Member, U.S. Senator from North Carolina .....	2
Murray, Hon. Patty, U.S. Senator from Washington .....	3
Tester, Hon. Jon, U.S. Senator from Montana .....	4

## WITNESSES

Dunne, Hon. Patrick W., Acting Under Secretary for Benefits, Veterans' Benefits Administration, Department of Veterans' Affairs, accompanied by Michael Walcoff, Deputy Under Secretary for Benefits, Veterans' Benefits Administration .....	5
Prepared statement .....	7
Response to written questions submitted by Hon. Patty Murray .....	11
Response to questions arising during the hearing by:	
Hon. Patty Murray .....	15
Hon. Jon Tester .....	18
Baker, Kerry, Associate National Legislative Director, Disabled American Veterans .....	23
Prepared statement .....	25
Cox, J. David, R.N., National Secretary-Treasurer, American Federation of Government Employees .....	37
Prepared statement .....	39
Pierce, Howard, Chief Executive Officer, PKC Corporation .....	43
Prepared statement .....	46
Rollins, William "Bo," Director of Field Services, Paralyzed Veterans of America .....	48
Prepared statement .....	50



# HEARING ON REVIEW OF VETERANS' DISABILITY COMPENSATION: UNDUE DELAY IN CLAIMS PROCESSING

WEDNESDAY, JULY 9, 2008

U.S. SENATE,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:30 a.m., in room 418, Russell Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Murray, Tester, and Burr.

## **OPENING STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII**

Chairman AKAKA. The Committee on Veterans Affairs of the U.S. Senate will come to order.

Good morning, everyone. I am pleased that you can join us for the fourth in our series of hearings to review veterans' disability compensation.

Today's hearing will examine what can be done to mitigate the undue delay in claims processing. It is something that has been with us and we are looking forward to finding answers as to how we can improve this.

The Veterans' Benefits Administration's workload will continue to increase in the coming years. Two factors make this true.

One is aging veterans who have conditions made worse by their advancing age and newer veterans returning disabled from Iraq and Afghanistan. The time necessary to process a disability claim continues to be a matter of concern to veterans and to this Committee.

While VBA's goal is to process a disability claim within 125 days, they remain woefully short of that goal with most claims completed within 185 days—fully 2 months beyond their goal. That is 2 months of waiting in limbo for a benefit that was earned through selfless service to our Nation.

There is some gratifying news. For the first time in recent memory, VBA is now processing more claims than it receives, but as I have said many times, timeliness cannot take precedent over accuracy. These two components go hand-in-hand.

In recent months, accuracy has declined. I know that accuracy diminishes in part from the increase in the new hires that must learn the ropes. I am confident that VBA takes this issue seriously and is attempting to alleviate the decline.

Over the last several years, Congress has taken affirmative steps to ensure adequate staffing for claims processing. At the beginning of fiscal year 2007, the Compensation and Pension Service had more than 8,000 staffers with a goal of hiring more than 2,000 more by the end of fiscal year 2008. As of last week, VBA had just 290 more full-time employees to hire in order to reach its goal. VBA's hiring process has proven to be effective and timely. I am hopeful that this increase in staffing will put VBA further on the road to reducing its inventory of rating claims.

However, the increase in staffing is not enough to solve the many issues that VBA faces in adjudicating claims. It is my hope that the groups we have assembled today will begin an open dialog with this Committee on what more should be done to improve claims processing. Staffing is not the only answer. Greater reliance on technology, increased training initiatives and an enhanced adjudication process are possible components of an improved system. There will be no silver bullet, no quick fix; but this is one area where the Committee must continue to provide oversight and assistance.

Again, I want to thank you for being here today and I would now like to call upon our ranking member for his statement.

**STATEMENT OF HON. RICHARD BURR, RANKING MEMBER,  
U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Thank you, Mr. Chairman, and welcome panels.

As part of its mission, the Department of Veterans Affairs provides a wide range of benefits to veterans, including pension benefits and disability compensation. For many years, VA's claims processing system has been plagued by large backlogs and long delays.

We are well aware of the problems that these delays can cause our veterans. Veterans back in North Carolina regularly tell me how frustrated they are with the confusing process. In recent years, Congress has responded to the problem by providing more money so the VA can hire more employees.

Since 1997 this funding increase has allowed VA to more than double its claims processing staff. Unfortunately, despite all the added funding and staffing, we have not seen much improvement. In fact, it is now taking an average of about 6 months to get a decision to veterans. That is among the longest processing times since 1997. And the number of pending claims is around 390,000—among the highest levels in 10 years.

However, if you look in this year's budget, the VA's explanation for this enormous backlog is basically the same as it was 10 years ago. We need better answers and we need new ideas to solve this problem once and for all.

Simply throwing more money and more personnel at the problem clearly has not been the solution.

Mr. Chairman, I think this hearing will provide a good starting point for the Committee to seriously explore other options. As we will discuss today, those options may include the increased use of technology in converting to full electronic claims processing procedures. In my view, moving away from a paper-based process could lead to much better service for our country's veterans.

As we have seen on the health side of VA, electronic health records not only prevent medical information from being lost, it can also be used to remind VA staff of when to schedule a veteran's next appointment, chart their health over time, and prevent life-threatening medical errors from occurring. So, I hope our country's veterans will soon have the benefits of a modern electronic system for benefits as well.

I believe it is important to keep in mind that lasting improvement in the claims process may require more than just automation and a few small changes. As the Government Accountability Office put it, and I quote, "There are opportunities for more fundamental reform that could drastically improve decisionmaking and processing," unquote.

For example, commissions and studies have stressed for more than five decades the need to update the VA disability rating schedule, a tool that is the cornerstone of the entire disability claims process.

As the Veterans' Disability Benefits Commission recently stressed, and I quote, "It is critical that the rating schedule be as accurate as possible, so that ratings decisions based on it are as valid and reliable—and therefore fair—as possible," unquote.

Without updating this critical part of the claims system, we may succeed in speeding up the process but the results for veterans might possibly be no better.

So, Mr. Chairman, I hope the Committee will consider not only the use of automation in helping to improve the claims process but will also work to address some of the fundamental changes that could lead to better service and, more importantly, different outcomes for our country's veterans.

Mr. Chairman, again, I want to thank you for holding what I think is an extremely important hearing and I look forward to the testimony of our witnesses today.

I yield the floor.

Chairman AKAKA. Thank you very much, Senator Burr.  
Senator Murray.

**STATEMENT OF HON. PATTY MURRAY,  
U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Thank you very much, Mr. Chairman, Senator Burr.

I really appreciate your holding this hearing today on undue delays in the disability claims processing system and I welcome all of our panelist today. I appreciate all of your time today to talk to us about this critical issue.

We all know that when a decision about a veteran's VA claim is excessively delayed, the result is financial and emotional hardship for the veteran and for his or her family.

The VA has a backlog of nearly 400,000 claims and an average claims processing time of 183 days. As the number and complicity of disability claims being filed with the VA increases, it is more important than ever that we make the necessary changes to improve the disability claims process.

Over the last several years, Congress has taken steps to do that by providing funding to increase staffing at the Veterans' Benefits

Administration and I am pleased that VBA has made substantial progress in meeting its hiring goals for the new full-time employees. But, simply increasing staff at the VBA will not solve all the problems with the Veterans' Disability Compensation system.

We have got to make sure that new claims adjudicators are properly trained, there is accountability, there is staff at levels—all levels of the agency—and, importantly, that we make the systemic changes that are needed to improve the system.

And as the VA starts to improve the timeliness of the claims, I think we need to ensure that the quality of those claims are not sacrificed.

I am concerned that VBA employees perceive management to value the quantity of claims processed more than the quality of those claims and I look forward to hearing from our witnesses today about how we can best address that issue.

Mr. Chairman, I have a transportation markup that has been moved up to 10:30 this morning as a result of the votes that have been scheduled, so I will not be able to stay probably for the second panel, but I want all the witnesses to know I will be reviewing the testimony. I think it is extremely important and will work with everyone to help make sure we are doing accurate ratings for all of our veterans.

Thank you very much.

Chairman AKAKA. Thank you very much, Senator Murray, and I want to thank you for your regular attendance here at the Committee. I appreciate that.

Senator Tester.

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. I too want thank you, Mr. Chairman and Ranking Member Burr, for holding this hearing. I think it is critically important and I want to thank you fellows for being here, too. I appreciate your work.

As I look at the figures, in fiscal year 2007 it took 183 days to process a veteran's disability claim. So far this year, it is about 182 days. We picked up a day so we are headed in the right direction. It took 120 days in the late 1990's.

The backlog, as you mentioned earlier, was exceeding 400,000 at the beginning of the year and now it is down 390,000. We are heading in the right direction, but we have got a long way to go.

And, you know, when I go and talk to veterans, and I've told this story before, about the one veteran who specifically stood up and said, "The VA is trying to outlive me." It is as simple as that. It is almost an adversarial relationship. And I do not think anybody wants that.

But the question I have is that, I mean, we have talked about staffing, we have talked about additional money, technology training, the adjudication process, the rating schedule. The question I have is, that there has got to be a reason why it takes this long. And I do not know what it is, but I have got a notion you guys might.

We can sit here and we can have you guys in front of us and we can talk about the issues that revolve around the untimeliness of

the claims process. But you need to tell us what you can do to fix it and when it will be fixed or if this is the best we can do. Truthfully, I hope we can do much much better. It was better in the 1990's. I think it can be better, but I look forward to your testimony and I look forward to solutions for getting this figured out because, as Senator Murray pointed out, it is financial and it is emotional. Families tend to split up and there are all sorts of problems that are created when we've got somebody who has served this country that we do not treat in a timely manner and get the family benefits they deserve.

So, I want to thank you folks for being here and I also wanted to thank the second panel for being here at this time. But, what I am looking for today are solutions because we put money, we have staffed up and we are still not getting much better. Why?

Thank you, Mr. Chairman. And, thank you folks for being here.

Chairman AKAKA. Thank you very much, Senator Tester.

I want to welcome our principal witness from VA, Admiral Patrick Dunne, Acting Under Secretary for Benefits. He is accompanied by Michael Walcoff, Deputy Under Secretary for Benefits.

I thank you both for being here. VA's full testimony will appear in the record.

Admiral Dunne, will you please begin.

**STATEMENT OF HON. PATRICK W. DUNNE, ACTING UNDER SECRETARY FOR BENEFITS, VETERANS' BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS' AFFAIRS; ACCOMPANIED BY MICHAEL WALCOFF, DEPUTY UNDER SECRETARY FOR BENEFITS, VETERANS' BENEFITS ADMINISTRATION**

Mr. DUNNE. Mr. Chairman, Members of the Committee, good morning and thank you for the opportunity to discuss VA's disability claims processing system this morning.

I was going to give you an update on our workload, but, sir, you have adequately covered that; so I think I will move right on.

The nationwide hiring initiative which you mentioned has added more than 2700 new employees since last year and will result in a total of 3100 additional employees by October.

To rapidly integrate these new employees, we modified our training program to initially focus on specific claims processing functions. This allows them to become productive sooner and lets our more experienced employees focus on the more complex and time-consuming claims.

Timeliness, as you mentioned, has not improved that much from last year, 183 down to 181 as of the 30th of June, and that does not meet our goal that we set of 169 days.

One of the factors—short-term factors—in this is the increased number of claims that we have seen. This year there's a 5 percent increase thus far through the fiscal year.

One of the things we have observed and are aware of is that the evidence gathering process takes the most time; and so, therefore, we have instituted several initiatives to speed development.

Last year, two development centers were established in Roanoke and Phoenix to assist regional offices experiencing workload difficulties. Participating regional offices have reduced the number of

cases awaiting development by between 30 and 75 percent and we are establishing two additional development centers in Togus and Lincoln.

At the Waco Regional Office, the Texas Veterans Commission has provided four full-time employees to make telephone contact with claimants and third-party sources to obtain necessary evidence more quickly. This initiative has already achieved some early successes and we are exploring expansion to other States.

We conducted two pilot projects using imaging technology. Both projects utilized our virtual VA imaging platform and related applications.

The first involves imaging documents received in conjunction with the annual income verification and reporting process of the pension program. We are expanding this effort to support the transition of all pension claims processing to the Pension Maintenance Centers.

The second supports the BDD Program. The separating service-members' medical records and supporting claims information are imaged at the outset of the claims process. By September, all BDD claims will be paperless.

We are developing another pilot project to allow self-service changes to beneficiaries' accounts such as change of address or change of banking institution or addition or deletion of a dependent.

We are also exploring the utility of business rules engine software for both work flow management and to potentially support improved decisionmaking by claims processing personnel.

Last September VA contracted with IBM Global Business Services to analyze our current business processes and recommend changes. The short term recommendations are incremental enhancements to the existing paper-based processes. The greatest efficiencies will be gained as a result of IBM's longer term recommendations to move to an electronic paperless environment.

The IBM study noted bottlenecks occurred during the time we wait for a response to our Veterans' Claims Assistance Act letter. VA issued a final rule on May 30th to shorten the period to 30 days, as recommended. We also simplified the VCAA letter as recommended and they will be available electronically with our November software update.

IBM identified enhancements to the veteran's online application. We recently completed the process to accept on-line applications without requiring submission of a signed paper application. This streamlines the application process for veterans and reduces the need for additional development by VA personnel.

Integration with VETSNET is also critical to success. Approximately 98 percent of all of the regional compensation claims are being processed end to end in VETSNET and we are now paying monthly compensation benefits to nearly 2.4 million veterans using this modernized platform.

In November of 2007, VA and DOD launched a joint pilot of the revised disability evaluation system in the national capital region. VA now enters the process at the beginning rather than at the end. The process has been organized to enable VA to authorize benefits on the date that the member separates from service.

As of June 29, a total of 461 servicemembers have entered the pilot and 69 servicemembers have completed or exited the pilot and returned to duty.

Mr. Chairman, this concludes my testimony and I will be happy to respond to questions.

[The prepared statement of Mr. Dunne follows:]

PREPARED STATEMENT OF REAR ADMIRAL PATRICK W. DUNNE, USN (RET.), ACTING UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee: Thank you for the opportunity to appear before you today to discuss the Veterans Benefits Administration's (VBA) disability claims processing system. I am accompanied by Mr. Michael Walcott, Deputy Under Secretary for Benefits.

Today, my testimony will focus on the numerous efforts we have in progress to improve the claims process. I will also address the recent independent study conducted by IBM and the actions we have taken to implement IBM's recommendations.

Before I discuss our efforts to improve benefits delivery, I would like to update you on our current workload situation. Last year we estimated we would receive 855,000 disability claims in fiscal year 2008. However, based on our claims receipts through May, we now project that we will receive as many as 883,000 disability claims this fiscal year, an increase of over 5 percent from last year. While the incoming volume of claims continues to grow, our decision production has also significantly increased. Even with the increased volume, we are now completing more claims than we receive. As a result, the pending inventory at the end of May was reduced to 390,000.

VBA is continually seeking new ways to increase production and shorten the time veterans are waiting for decisions on their claims. In the near term, we have several initiatives that I will highlight here today. However, key to our success will be our ongoing longer-term efforts to enhance and upgrade our claims processing systems through integration of today's technology.

#### HIRING INITIATIVE AND TRAINING

Last year we began an aggressive nationwide hiring initiative that has added more than 2,700 new employees since January 2007. Our hiring plan will result in an unprecedented increase of a total of 3,100 additional employees through the end of this fiscal year. At the same time, we continue ongoing recruitment to replace staffing losses that occur due to normal attrition.

To rapidly integrate these new employees into the claims production process, we modified our new employee training program to focus initial training on specific claims processing functions. This allows our new employees to become productive earlier in their training program and lets our more experienced employees focus on the more complex and time-consuming claims.

While the complexity of VBA's decisionmaking responsibilities normally requires a comprehensive program of classroom and on-the-job training over the course of a 2-year period, our modified training program for new employees has contributed to earlier performance improvements from the staffing increases. In May 2008, our inventory of 390,000 was at the lowest level since September 2006. We expect continued reductions through the balance of this year and throughout 2009.

#### TIMELINESS OF PROCESSING

The timeliness of our claims processing decisions has essentially remained stable throughout this fiscal year. In fiscal year 2007 our average processing time was 183 days; we have averaged 182 days through May of this year. This is very disappointing to us, as we projected we would reduce our processing times this year to an average of 169 days. We believe our inability to reduce processing time this year is due in part to the greater than projected increase in incoming claims we are experiencing (approximately 30,000 more than projected). Although we increased production and will end the year at or above our projection of 878,000 completed claims, the greater volume has had an impact on our ability to achieve the timeliness improvements we projected. However, as our new hires receive training and gain experience over the coming months, we will make significant improvements in timeliness in 2009.

## PILOT TO EXPEDITE CLAIMS DEVELOPMENT

Because the evidence-gathering process comprises such a significant portion of the time required to provide veterans with decisions on their claims, we have recently undertaken a pilot initiative in partnership with the Texas Veterans Commission (TVC) to test new ways to expedite claims development.

Through an intergovernmental agreement with the Waco Regional Office, TVC is providing the equivalent of four full-time employees who will make telephone contact with claimants and third-party sources in efforts to obtain necessary evidence more quickly. Additionally, the TVC employees have been trained to retrieve information from electronic sources to assist in obtaining documentation required to advance claims. This pilot commenced on June 9, 2008, and will run through January 2009. This initiative has already achieved some early successes, and we are exploring expansion of the pilot to other States.

## DEVELOPMENT CENTER EXPANSION

Last year VBA established two Development Centers in Roanoke and Phoenix to assist regional offices experiencing workload difficulties. This year through the end of May, these two centers completed development on over 31,000 claims. We are establishing two additional Development Centers this year in Togus and Lincoln. The Togus Center is already operational and the Lincoln Center will be fully operational in October 2008. Regional offices that have sent cases to the Development Centers have reduced the number of cases awaiting development (reductions range from 30 percent to 75 percent). We expect marked improvements in the timeliness of claims decisions at these regional offices as a result of the Development Centers' efforts.

## INDEPENDENT STUDY OF THE CLAIMS PROCESS

Because of the increasing and changing workload and workforce and our desire to ensure we are using the most effective methods of organizing work and maximizing resources, we sought help from the private sector. In September 2007, VBA contracted with IBM Global Business Services to analyze our current business processes and recommend changes to further improve our operational efficiency and consistency.

From October 2007 through January 2008, IBM conducted a detailed review of the business processes involved with claims adjudication, beginning with application receipt and ending with notification to the claimant. Overall, IBM's recommendations validated areas for efficiency gains we had already identified internally.

Both the short-term and long-term recommendations made by IBM focus on the phases of the claims process and specific activities under VBA's control. The short-term recommendations are incremental enhancements that VBA can make to the existing business processes to realize benefits in efficiency and productivity. Because our current claims process is heavily reliant on paper and the movement of paper claims folders, the greatest efficiencies will be gained as a result of IBM's longer-term recommendations to move to an electronic, paperless environment.

## IMPLEMENTATION OF IBM'S RECOMMENDATIONS

When analyzing our claims process, the IBM study team noted that bottlenecks occur during the time VBA waits for a response to our Veterans Claims Assistance Act (VCAA) letter. Upon receipt of a claim for benefits, claims processors must carefully analyze all issues and determine what evidence is necessary to substantiate the claim. Under the VCAA, we must provide a letter to the claimant detailing the evidence required to substantiate the claim and which party (VA or the claimant) is responsible for obtaining the evidence. Under statute (38 U.S.C. 5103), claimants have 1 year from the date of the VCAA notification to submit any requested evidence. However, VA may make a decision on the claim prior to the 1-year expiration. To help streamline this evidence-gathering process, IBM recommended that we simplify the VCAA letter and also reduce the evidence-gathering time period from 60 days to 30 days.

VA issued a final rule on May 30, 2008 that clarified the 30-day response time. VA now allows 30 days for a claimant to respond to the VCAA notification before VA may adjudicate a claim. Of course, if the claimant submits evidence after VA adjudicates a claim, but before the expiration of the 1-year period, VA will readjudicate the claim.

We have revised the VCAA letters in order to reduce confusion and misunderstanding by the veterans. Four new VCAA letter templates were created for specific types of claims. Each letter template is concise, reader-focused, and consolidates all VCAA requirements to a single enclosure. The option to waive the VCAA waiting

period to further help expedite the claims process is in bold font on the first page of each letter template. Programming changes to our claims processing systems are necessary to implement the new letters. The revised letters will be available for use in field stations with our November 2008 programming update.

To achieve large-scale improvements in efficiency and productivity, VBA must make a fundamental shift in how we process compensation and pension claims. All of IBM's longer-term recommendations focus on information technology enhancements that will allow VBA to move into a paperless environment. Integration of paperless processing technologies will enable us to assign and manage work electronically and reduce manual activities, freeing resources for more value-added decisionmaking. Eliminating manual processes is necessary to greatly improve VBA's timeliness.

IBM identified enhancements to the current Veterans Online Application (VONAPP) system as one of the critical first steps in VBA's transition. Because VONAPP is not integrated with our IT systems, data from applications that were filed on-line must be manually entered into our processing systems. Enhancing VONAPP is an essential step in moving to a paperless environment. We recently completed the process to begin accepting VONAPP applications without requiring submission of a signed paper application. The electronic application is accepted as sufficient authentication of the claimant's application for benefits. This streamlines the application process for veterans and their families and reduces the need for additional development by VA personnel to obtain the required signatures. Normal evidentiary development procedures and rules of evidence still apply to all VONAPP applications.

Our comprehensive strategy for paperless delivery of veterans' benefits employs a variety of enhanced technologies to support end-to-end claims processing. In addition to imaging and computable data, we will incorporate enhanced electronic workflow capabilities, enterprise content and correspondence management services, and integration with our modernized payment and claims processing system, VETSNET.

Integration with VETSNET is also a critical success factor in our overall strategy. We have made significant progress in the implementation of VETSNET over the past 2 years. Approximately 98 percent of all original compensation claims are being processed end-to-end in VETSNET, and we are now paying monthly compensation benefits to nearly 2.4 million veterans—or approximately 84 percent of all compensation recipients—using this modernized platform.

We are exploring the utility of business-rules-engine software for both workflow management and to potentially support improved decisionmaking by claims processing personnel. We published a "Request for Information" last summer that yielded a variety of products that may be useful in our end-state vision.

We have conducted two pilot projects that have demonstrated the utility of imaging technology in our Compensation and Pension Program. Both projects utilize our Virtual VA imaging platform and related applications. Virtual VA is a document and electronic claims-folder repository.

The first pilot supports our income-based pension program. It involves imaging documents received in conjunction with the annual income verification and reporting process. This imaging allows the three Pension Management Centers to make the necessary claims adjustments without retrieving and reviewing the paper claims file. We are expanding this effort to support the transition of all pension claims processing to the Pension Maintenance Centers, which will bring this category of claims into the paperless environment from the outset of the claims process.

The second pilot supports the compensation program at the centralized rating activity sites for our Benefits Delivery at Discharge (BDD) Program. The separating servicemembers' medical records and supporting claims information are imaged at the outset of the claims process. This allows rating veterans service representatives to make decisions based solely upon review of the imaged records rather than the paper claims file. We are now expanding this pilot to include all claims filed under the BDD Program. By September 2008, all BDD claims will be processed in the paperless environment.

We are continuing to expand. The next category of claims to move to the paperless environment will be claims filed by separating servicemembers who have less than 60 days until discharge.

We are developing another pilot project as a first step in implementing on-line "self-service" to allow veterans to manage some of their interactions with VA electronically. This project will examine issues such as user authentication that will allow self-service changes to beneficiaries' accounts (e.g., change of address or banking institution, addition or deletion of a dependent).

## DISABILITY EVALUATION SYSTEM (DES) PILOT

In November 2007, VA and the Department of Defense launched a joint pilot of the revised Disability Evaluation System in the national capital region. The redesigned process differs from the existing standard process in four critical elements.

First, VA enters the process at the beginning rather than the end. When a servicemember is referred for a Medical Evaluation Board, VA is advised of the conditions that are potentially unfitting. Experienced VA military services coordinators interview the member and determine whether there are additional conditions that the servicemember believes were incurred in or aggravated by their military service.

Second, a comprehensive physical examination is conducted according to VA protocols for both the potentially unfitting and other claimed conditions. In the initial stages of the pilot, VA is conducting those examinations. As the pilot expands and if it becomes the standard business practice, examinations will be conducted according to VA protocols by a combination of DOD, VA and contract clinicians.

Third, if DOD determines that the servicemember is unfit for further military duty, VA assesses the level of disability for both the unfitting and other claimed conditions for DOD and VA purposes. Thus, there is one rating and the servicemember has a comprehensive understanding of what he/she is entitled to from both Departments.

Finally, in accordance with DOD policy, the member has a right to a one-time reconsideration of the evaluation assigned by VA by a VA Decision Review Officer while the member is still on active duty. This review does not compromise the servicemember's right to exercise his/her VA appellate rights once separated.

The process has been organized to enable VA to authorize benefits on the date that the member separates from service. As of June 15, 2008, a total of 439 servicemembers have entered the program. One member has separated from service and four other servicemembers were scheduled to separate on June 27, 2008. Currently 33 servicemembers are in transition pending separation.

## EXPANDED QUALITY ASSURANCE PROGRAM

As part of VBA's continued commitment to quality improvement, VBA is expanding its quality assurance program. The national STAR (Systematic Technical Accuracy Review) staff has been consolidated to the Nashville office. The expanded program includes increased national accuracy review sampling, expanded data analysis, and focused rating decision consistency reviews.

Based on sound statistical sampling procedures, sample size for any national or regional office accuracy measure should be 246 cases. With the addition of 10 FTE in February 2008, the STAR staff was able to increase the annual rating sample size for each regional office from 120 cases to 246 cases in April 2008. A similar increase for the Pension Maintenance Centers (PMC) annual sample is planned for August 2008. Expansion of the sample size for the 57 regional offices for compensation maintenance (authorization) end products is pending completion of new space completion and full hiring.

This year the STAR staff conducted several special focused reviews of rating cases, including a special quality review of radiation cases and the ongoing review of extraordinarily large awards. Additional special reviews include a focused review of cases completed by the Appeals Management Center that began in June 2008.

On-going data analysis is conducted quarterly to identify the most frequently rated disabilities or diagnostic codes, assess the frequency of the assignment or denial of service connection for each code by regional office, and assess the most frequently assigned evaluation code for each code by regional office. Focused audit-style case reviews are conducted on station outlines to identify root causes of inconsistency. Through these regular reviews, we expect to gain more consistent decision-making across regional offices, as well as a better understanding of underlying causes for variation across geographic boundaries.

## CONCLUSION

Mr. Chairman, this concludes my testimony. I will be happy to respond to any questions that you or other Members of the Committee may have.

RESPONSE TO QUESTIONS SUBMITTED BY HON. PATTY MURRAY TO ADMIRAL PATRICK DUNNE, ACTING UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS

*Use of Private Medical Opinion for Ratings*

*Question 1.* Admiral Dunne, both the Paralyzed Veterans of America and the Disabled American Veterans believe that the VA should allow the medical statements and opinions of private physicians to be used for the purpose of adjudicating a claim, but despite being able to do so under law, I am told that VA adjudicators regularly ignore the findings of private physicians and require the veteran to obtain a medical opinion from a VA doctor, unnecessarily delaying the claim. Can you tell me why the VA does not accept the medical opinions or statements prepared by private physicians for the purpose of adjudicating a claim?

Response. The Department of Veterans Affairs (VA) regularly accepts medical evidence, such as statements and opinions, from private physicians that are submitted by veterans and survivors in support of their claims. Such evidence often establishes entitlement to the benefit sought by the claimant, whether service connection or a higher disability evaluation.

VA regulations direct that such evidence be accepted for the purposes of establishing and/or rating a claim. 38 CFR § 3.157(b)(2) provides that evidence from a private physician will be accepted as a claim for increased benefits or a claim to reopen when it is competent and shows a reasonable probability of entitlement to benefits. 38 CFR § 3.326(b) and (c) direct that statements from a private physician and hospital or examination reports from any private institution may be accepted for rating a claim without further examination by VA if the private evidence is otherwise adequate for rating purposes. Further, 38 CFR § 3.328(b) provides that a claimant or a claimant's representative may ask VA to obtain an expert medical opinion from a non-VA source when warranted by the complexity of the case.

VA applies the same uniform standard in evaluating all medical evidence, whether generated by VA, another Federal agency, or a private medical provider. VA assesses the credibility and probative value of such evidence, resolving all reasonable doubt in the claimant's favor, in adjudicating disability claims.

*IT upgrade*

*Question 2.* All of the IBM report's long term recommendations focus on improving VBA's information technology system. Can you tell me how much these measures are expected to cost and if you are budgeting accordingly for their implementation?

Response. In collaboration with VA's Office of Information and Technology (OI&T), the Veterans Benefit Administration (VBA) is developing an overarching strategy for the *Paperless Delivery of Veterans Benefits Initiative*. This initiative conceptually incorporates many of IBM's recommendations as well as findings from analyses conducted by VBA. The concept of operations is to employ a variety of enhanced technologies to support end-to-end claims processing. In addition to imaging and computable data, VBA will also incorporate electronic workflow capabilities, enterprise content and correspondence management services, and integration with our modernized payment system, VETSNET. In addition, VBA is examining the utility of business rules engine software for both workflow management and potentially to support improved decisionmaking by claims processing personnel.

To fully develop the *Paperless Delivery of Veterans Benefits Initiative*, VBA will engage the services of a lead systems integrator (LSI). The LSI will work closely with VBA and OI&T during fiscal year 2009 to fully document detailed business requirements, technical requirements, and a systems engineering master plan. Until we have had the opportunity to complete these tasks with the LSI, it is premature to speculate on the full life-cycle cost of the paperless initiative. VBA and OI&T have examined a similar paperless claims processing initiative undertaken by the Social Security Administration (SSA). The *Electronic Disability Project* (eDib) is one of the most notable strategic investments at SSA. By analogy, SSA's paperless initiative eDib, has a reported life-cycle cost of approximately \$800 million and 8 years to fully implement.

A comprehensive investment strategy is critical for the success of this initiative. The recently approved supplemental appropriation of \$20 million, earmarked to support improved claims processing through information technology, will be a significant factor in this strategy. Additional funding would be required to sustain planned investments for the LSI, systems engineering, and development activities.

Chairman AKAKA. Thank you very much, Admiral Dunne.

As I mentioned in my opening statement, over the last several years Congress has taken steps to ensure adequate staffing for

claims processing and I think we have done that. But, beyond staffing, is there legislative assistance that Congress could provide that would aid in improving the process?

Mr. DUNNE. Sir, I am not aware of anything that I would ask for right now. As we go through the paperless process, preparing for that, something may arise and I would recommend asking for it at that point in time. But we need to pursue the IT work that is ongoing and move that along as fast as we can.

Chairman AKAKA. Admiral Dunne, VBA has developed new VCAA letters for four types of claims. Can you elaborate on the changes that were made and discussed how these changes will make it easier for veterans to understand the adjudication process?

Mr. DUNNE. Yes, sir. The basic context of the letter was to move some of those things—which are mandated by the courts and tend to be in difficult language to understand—move those as enclosures to the letter which the veteran can deal with after reading through the text at the beginning. It basically says, here is what we have got, here is what we are acting on, here is how you can help us, and here is how you can contact us. And the remainder of the information is as an enclosure which they can look at afterwards.

Chairman AKAKA. Admiral, how would you determine if the single disability evaluation pilot should be expanded to other areas; or can the process that was created in Washington be duplicated in smaller communities?

Mr. DUNNE. Sir, I believe, based on the information that we have gotten since last November, that we can take some of the lessons learned and use them throughout the country at all of the bases where the disability evaluation system is executed.

At the meeting we had at the Senior Oversight Committee yesterday, we decided to meet on August 12 to discuss the lessons learned up to this point and at what rate we would expand the pilot beyond the National Capital Region.

Chairman AKAKA. Admiral, in your written testimony, you describe a pilot between VBA and the Texas Veterans' Commission to expedite claims development. TVC employees have been trained to retrieve information from electronic sources to assist in obtaining the documentation required to advance claims. Does VA not have the resources to do this without using outside organizations?

Mr. DUNNE. Sir, we took it on as a pilot to evaluate the impact of the process. As you know, probably two-thirds of the time that it takes to process a claim is spent on actually gathering this evidence.

And so, in talking with the folks in Texas, we came up with the idea of letting their experienced folks work on some of the more difficult parts of the development process. To give you an example, I was down in Waco last week to talk with the four people that are doing this process and get some feedback from them. One of them described to me the fact that she was working on a case and one of the problems in that case was verifying that the veteran had actually been in Vietnam.

In going through the records—going back trying to find something, after several hours of work—she was able to determine from a re-enlistment document that had been executed in Da Nang that, obviously, that veteran had been in Vietnam because that is where

the enlistment took place. But, that was several hours worth of work that had been required to do that. It is time intensive. So, we are trying to go through this and use then the experience that they get on these time-consuming projects to figure out if there is a management approach we can take and get the information faster.

Chairman AKAKA. Thank you for much for your response.

Senator Burr.

Senator BURR. Admiral, welcome. Thank you immensely for what you do. I think that sometimes you end up inheriting other people's problems or other people's lack of action. So, I empathize with the situation you are in and I thank you for the steps in the right direction that you are taking. But I have got to ask a real specific question.

Why does it take IBM to suggest something paperless when we collectively have all highlighted VA's commitment and success with a paperless medical health system process? Did anybody look at the health care side and say, my gosh, you know, it works so good, why don't we do this over here on this side?

Mr. DUNNE. Sir, I do not think that the intent of bringing in IBM was to define paperless, per se, but rather to define the best mechanism by which to get to that goal.

Senator BURR. Do we know today what that is?

Mr. DUNNE. What we know at this point is that we have several systems that work fairly well: say in the education area; in the insurance area; and in loan guaranty. They all have slightly different programmed type of capabilities and the requirements that on the C&P side would be, once again, slightly different. What was recommended is to bring in a lead systems integrator who would first evaluate what is in existence that works, what needs to be added to it, and then the most efficient and effective way to integrate all of those processes together.

I think the end result, at least what my vision is and what I am trying to impart to folks as I talk to them is, this starts back when you are in DOD before you become a veteran.

We need to get to the point where an active duty servicemember has a user name and a password which meets all of the criteria. But when they leave the service, all their records and everything need to come over to us. That is truly paperless. Until that happens, the best we are going to be able to do is get something in and turn it into a paperless document by scanning it or an OCR or getting it online.

But then, when you come back to us—as a veteran having only come in once electronically—for a loan guaranty, you do not have to start from scratch and tell us who you are all over again, because now we already know. We do not have to find out five different times.

Senator BURR. So, are we attempting to try to set up that process to get that information now?

Mr. DUNNE. Yes, sir. I would say that it works in two areas. One is, we are working around the edges on those things that we can right now. For instance, more documents to be scanned in, changing electronic signatures on the online application which exists

right now, getting an independent contract in place by August to completely rewrite that online application.

Senator BURR. Let me go back a couple of steps. What I heard you express to me was, you know, the one thing that we recognize is that if we take people who are currently in DOD and we electronically collect their information, this is invaluable to us whatever the platform is we create in processing the benefits. What are we doing to capture electronically that information today? I believe with every initiative like this there is a starting point.

Though we may not know exactly what the perfect platform is to roll out across-the-board, we do know that if we capture electronically everybody that is coming into the system today, or everybody that may come in the future, that we are ahead of the game because that is now electronic.

I think one of the frustrations that I personally have looking through the history of this is that—we have identified over and over again—as long as we have a paper system, the processing of that claim is locked to the person who holds the file versus a collective effort.

So, if for some reason that person took a 1-month vacation and nobody picked up the file, the veteran is basically out 30 days. So what would have been a 6-month process on average is now a 7-month process for that individual. I think any business model would tell you that that probably is not the most productive or efficient way to do it.

My only point is, we have an opportunity now to capture that information. You have expressed that would be beneficial. What do you need from us to help facilitate that, while in a parallel effort you are trying to determine what platform, when we roll it out and how many areas you can roll it out into.

Mr. DUNNE. Sir, in order to get started on that process we are working through the Senior Oversight Committee on the inter-operable health records. Also, the interagency program office—which the National Defense Authorization Act required us to stand up, as you know—was started on the 29th of April.

At the SOC yesterday we were talking specifically about expanding the responsibilities of that office so that it pulls in not just the health records but the administrative records that are needed also.

On our side, specifically, we are working the contracts to make sure that virtual VA—which would be the recipient of this data electronically coming over from DOD—is basically ready to receive. So, we are working to improve our capability, our bandwidth, our ability to take the flow that DOD would be required to give us.

Senator BURR. My time is up and I do not want to take you through any questions. I want to instill a statement with you. It is my hope that those things that we feel certain about we will accelerate the process.

I think the only way we fail is inaction. I think you can study some things to death. I think we know, with some degree of certainty, 60 percent of what we need to do and I do not believe that you can wait until you know 100 percent to start executing the 60 percent that you do know.

The troubling thing about this town and this institution is that we have a change of administrations every 4 years, which is sort

of like getting the opportunity to restart the clock. Then, somebody new walks in and they want to assess everything from start to finish. That takes about three and one-half years. And all of a sudden we are at a hearing like this and in the interim it has been funding and personnel. Now, we have tried that. We have tried that and the net result is, it got marginally better.

My hope is that in the time that this Administration has left, that we will set a course, a bold course, to try to find a solution, as Senator Tester said, one that would have to be reversed by the next Administration, versus studied. And we rely on you to carry that back.

Thank you.

Chairman AKAKA. Thank you very much, Senator Burr.

Senator Murray.

Senator MURRAY. Thank you very much, Mr. Chairman.

I am thinking, Admiral, I have heard that many of the valuable new employees that Congress has given VBA money to hire have been let go during their probationary period because they cannot meet production quotas. Is that true, and if it is true, does that raise concerns about the adequacy of training? I wondered if you could address that.

Mr. DUNNE. Senator, I have not seen any details or facts on people being let go. There is a certification process as the training takes place, and as you know, working on claims is a demanding skill, and some folks who might be inclined to do it and want to do it may not be as successful. I will have to get you figures on the number.

Senator MURRAY. Do you know how many probationary employees have been terminated?

Mr. DUNNE. I would have to get that data for you, Senator.

Senator MURRAY. I would appreciate that.

[VA was unable to provide this information by the Committee's deadline for printing this hearing.]

Senator MURRAY. Do you think the training is adequate?

Mr. DUNNE. Senator, I think that we are always trying to improve our training. I think that the training that we are doing right now is the best that we are capable of doing. But we are not satisfied with that and we are always evaluating it and trying to find out ways to do it better.

Senator MURRAY. I have a concern about the measurement of caseloads. Oftentimes when you set a numeric goal, the number itself becomes the bottom line and that often means that you are shifting your focus from quality to quantity, then everybody is just trying to get to that number.

I have heard that there are some reports on the practice of regional offices using different methods to hide the age of older cases in order to artificially strengthen that number of average days pending. Have you heard of any reports of that practice?

Mr. DUNNE. No, Senator, I have not, because if I was aware of something like that, I would take action to fix it.

Senator MURRAY. Is there any way for the VBA to ensure that that is not happening or to make sure it does not happen?

Mr. DUNNE. I would say that we monitor the figures at our level here in Washington and hold people accountable for them. We ask questions about them.

I have already been around in the last 2 months to visit 10 percent of the regional offices and look and ask questions, and we do not just accept the numbers. We evaluate them and look for trends and try to figure out what makes sense.

Senator MURRAY. I would appreciate it if you would specifically look to make sure about not hiding numbers based on age.

Mr. DUNNE. Senator, I am not aware of any. I will continue to look at that as I evaluate all the processes that we are conducting.

Senator MURRAY. I appreciate that. In looking at the testimony from the AFGE, it says that the IBM study did not interview a single front-line employee. If the point of the study was to improve the claims process, I do not understand why the VA staff did not interview staff on the ground that actually processed those claims.

Can you tell me why the VBA determined not to do that?

Mr. DUNNE. I cannot, Senator.

Do you have any knowledge of that, Mike?

Senator MURRAY. Mr. Walcoff.

Mr. WALCOFF. I do know that in the course of the study the IBM people did go out and visit regional offices. I do not know whether they did formal interviews with front-line employees, but I do know that in their travels throughout the offices they had contact and did talk with some employees. Whether they were formal interviews or not, I do not know. But, they definitely got out and visited several of our stations.

Senator MURRAY. It seems to me it would be a biased survey sample if we were not actually talking to the people on the ground who are processing claims and getting their input as well.

Mr. DUNNE. I cannot disagree with that, Senator.

Senator MURRAY. Admiral, this Committee has urged VBA on a number of occasions to improve the accuracy of its workload forecasting. I am not aware of any efforts by the VBA to do a time motion study or another study that would measure the amount of time needed to develop and rate different types of claims. Can you tell us if VBA has any plans to do anything like that?

Mr. DUNNE. I would say that it is part of the process of the management attention which is being put on it while we are trying to get into paperless claims.

I do not want to just sit there and say we are going to train up some people and eventually we are going to get paperless because the one thing I know is, we cannot turn this computerized system on a dime. We are going to be relying on those employees.

So, to take a look at how much time it takes them to do things—how the processes work—we need to make sure that the business process that is being executed is properly understood so that it can be digitized.

So, therefore, as we go through that, yes, I do intend to take a look at how we do things efficiently before we convert them digitally and perhaps turn out a system that we are not going to be happy with in the end.

Senator MURRAY. Mr. Walcoff.

Mr. WALCOFF. Senator, I do want to make one comment about a previous question that you asked having to do with the data integrity issue—of ROMs possibly hiding work or doing things that would make the numbers look better than they actually are.

There are specific, if an RO is going to do that, there would be certain things that they would do that I know from having been in a regional office—I was in Seattle for a while—and our C&P service has certain reviews that they do of our caseload where they look at a station, look for some of those types of what I will call “maneuvers” that would indicate that stations are prematurely taking end products, for instance, and then reestablishing them a short time later so that the case that is old does not get older.

There are several things like that that a station could do and we are aware of that. We have looked at those things to make sure that the numbers that we report are accurate numbers. So, I want to assure you that, you know, obviously we would like our numbers to be better, but not at the stake of our integrity; and that is something that we are aware of.

Senator MURRAY. Right. I just think that we all want those numbers to go down. We would love to have you sit in front of us and give us great numbers. But if it means that we are sacrificing the quality or hiding numbers or doing something to get there, then we have not done anybody a favor.

Mr. WALCOFF. I totally agree with you.

Senator MURRAY. Admiral, do you have anything else?

Mr. DUNNE. Senator, I guess I would add that one of the things that Secretary Peake and I take a look at is what we call our variance chart and it is not only time to complete but it is also accuracy. And so, therefore, you know, we are looking at that and I have to report to him periodically.

Senator MURRAY. My time is up.

Thank you, Mr. Chairman.

Chairman AKAKA. Thank you very much, Senator Murray.

Senator TESTER.

Senator TESTER. Thank you, Mr. Chairman.

Admiral Dunne, what is your working relationship with the DOD? Is it good?

Mr. DUNNE. I think I would classify it as better than good, Senator. I spend a lot of time with those guys.

Senator TESTER. So, you get everything you need from them?

Mr. DUNNE. I did not say that, sir.

Senator TESTER. If you are trying to reduce your claims, your evidence gathering period, DOD is a pretty critical part, an important part of this situation?

Mr. DUNNE. Yes, sir, it is.

Senator TESTER. What do they need to do better?

Mr. DUNNE. One of the things that we are working with them on is to get records that we need faster. One of the challenges is getting records from Guard and Reserve personnel because, as you know, their records are more piecemeal sometimes than a person who is on active duty and always has an active duty record.

So, we are working with them to alert the organizations that are scattered all around and have the records that it is important that the records be turned over to us expeditiously.

Senator TESTER. Is there anything we can do in that regard to help that expeditious turnover of records?

Mr. DUNNE. Not that I am aware of, sir. It is within the two organizations and I have got the attention of Mike Dominguez, who is my counterpart, and we are working on getting information out.

Senator TESTER. Can you give me an idea on the backlog that you have now, what percentage of those are National Guard and Reservists, if you can. You can get back to me.

Mr. DUNNE. I think I would like to get back to you.  
[The response from VA follows:]

RESPONSE TO QUESTIONS ARISING DURING THE HEARING BY HON. JON TESTER TO PATRICK W. DUNNE, ACTING UNDER SECRETARY FOR BENEFITS, VETERANS' BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS' AFFAIRS

*Question.* Can you give me an idea on the backlog that you have now. What percentage of those are National Guard and Reservists?

*Response.* At the end of June 2008, VBA had 390,034 claims pending. We are unable to identify how many of these claims were submitted by members of the Guard and Reserve components. However, we are able to identify pending claims from Guard and Reserve members deployed in support of the Global War on Terror (GWOT). As of the end of June 2008, there were 18,002 GWOT Guard and Reserve claims pending (35% of the total volume of pending GWOT claims).

Senator TESTER. OK. That would be fine.

You talked about a 5 percent increase in claims in fiscal year 2007, I believe. Is that correct?

Mr. DUNNE. In receipts of this year versus last year.

Senator TESTER. Do you have any projected increases in claims over the next 5 to 10 years.

Mr. DUNNE. I would have to go with the latest trend, sir, and think that it is going to stay to 4 to 5 percent.

Senator TESTER. OK. So that means that this is not going to be static for a while?

Mr. DUNNE. I would not expect it to be; no, sir.

Senator TESTER. You have talked about a situation where you found that a veteran that had reenlisted in Vietnam and that was the only evidence that you had that they had served in Vietnam.

Mr. DUNNE. That was what I was told, yes, sir.

Senator TESTER. For the stressor. How often does this happen where people come in and claim that they have got a stressor from Vietnam service and did not serve?

Mr. DUNNE. I do not have any figures on that, sir.

Senator TESTER. Is there any penalty for people who come in and make false statements about their service?

Mr. DUNNE. Yes, sir. That would be pursued if someone made a false statement.

Senator TESTER. That is good. In your opinion, you talked about 169 days next year to close out a disability benefit claim. What is the acceptable timeframe? In your opinion, what would be an acceptable timeframe for claims processing?

Mr. DUNNE. Well, I think we would like to get it down to 4 months.

Senator TESTER. Back to 120?

Mr. DUNNE. Sure. Yes, sir.

Senator TESTER. Do you feel confident that what you have done so far, from a long range planning standpoint, will get it there?

Mr. DUNNE. I would say that we have set the wheels in motion to be able to do it, but it will take a lot of hard work and management attention to execute it, to get us to that point.

Senator TESTER. Is there one thing that will speed it up more than others?

Mr. DUNNE. Yes, sir. Secretary Peake talking to me every day about it is keeping it sped up.

Senator TESTER. I was thinking more on process.

Mr. DUNNE. But I think that is an important part of the process. The essence of it is that it is important to Secretary Peake. It is important to me; and that message is being transmitted throughout the entire organization. I want people who are responsible for going paperless, coming to work every day saying what do I do today to make that process better and make it faster.

Senator TESTER. And it is important to us, too. We are here talking about it in a Committee meeting. It is very important and I have a tremendous amount of respect for Secretary Peake. He knows that.

The question is, is there a process? And, I agree with you—if the upper management does not think it is important, it is never going to get done. But is there a process in your long-term plan that can save more time than others?

Mr. DUNNE. I guess the best way to describe it is digitizing the records. In other words, if we can get to the point where a veteran can log on and do all those things that need to be accomplished and we can move things electronically from DOD over to us, yes, that would be a big help.

Senator TESTER. You touched on it in the first question and that deals with a question I asked. I believe quite a while ago you dealt with National Guard and Reservists and the fact that their claims get denied at a much higher rate—let us put it that way—than active duty. Do you have any more information on that to tell us if that is the case?

Mr. DUNNE. We still monitor that, sir. And just to go through the details: the active duty we calculated at 95 percent; and the Guard and Reserve at 87 percent. And I recall in the paper we provided you that some of the factors that we see there are longer terms of service on the active duty side, and more claimed disability contentions per claim on active duty side as a result of that longer period of service.

So, those are factors we need to continue to take a look at and track, but there is no intent to separate out the active duty from the Guard and Reserve.

Senator TESTER. OK. Thank you very much.

Chairman AKAKA. Thank you very much Senator Tester.

Admiral, I may have questions to submit for the record, but I want to ask you a final question.

This question deals with how you prioritize claims. Claims from global war on terror (GWOT) veterans are nearly 20 percent of VA's current completed workload. I understand that priority is given to both original and reopened claims for this group of veterans. Can you please explain what prioritization means and describe what special measures are taken in regional offices to expedite these claims?

Also, will VA reevaluate the priority given to GWOT veterans at a minimum for reopened claims when they become a larger part of VA's workload? And third, just to mention it, I am concerned that with so many veterans given priority, that attention to other veterans' claims will suffer?

Mr. DUNNE. Yes, sir. With the GWOT claims there is a flag that is put on the paper record. There is also a flash, it is called, that is put on in the computer system, so it is evident to folks.

There also are, within the regional offices, there will be a team that is set up that works the GWOT claims, but we will continually monitor the need to adjust those priorities—reopened claims versus other periods of service. Those are important and the numbers are important and the focus right now of that priority is because those veterans are in a transition phase. The most recent ones to enter a transition phase.

But, we are also tracking other elements. I mean, we take a look at how many claims from veterans 70 years and older are still pending. We have a tiger team that works on those as well.

So, I would like to say that to the extent that we can we put a priority on everything, the bottom line is we want to do every single claim in the minimum amount of time that we can do it.

Chairman AKAKA. Senator Burr.

Senator BURR. Admiral, I just have one last question. We have 57 processing centers. Do some historically perform poorer than others?

Mr. DUNNE. Yes, sir.

Senator BURR. And what are we doing to try to fix that?

Mr. DUNNE. Sir, we have a process that we are starting into to take a look at the variances between those offices, because if one office can be successful—be up in accuracy and days to complete where we want it to be—there is a reason. And so, my goal is to figure out why somebody is up here high and right on completion and accuracy when someone else is not up there. We need to take those best practices and generate those throughout the whole system.

Senator BURR. I look back at those March 2007 similar hearings and the information that was supplied to us and I marked the four locations that had at least a 10 percent increase in the number of days: Washington, DC; Pittsburgh; New York; and Reno.

Clearly Pittsburgh received some additional responsibilities at that time, which could explain their increase in the number of days. There were no caveats for the other locations.

The national average for 2007 was 177.4. The Washington, DC, data showed 306. The New York data showed 258. The Reno data showed 239. There were actually locations, Newark and Los Angeles, where the actual number of days went down. Certainly a good trend.

My hope is that you will stay focused on those processing centers where there is not just a problem in 2007. It is a historical challenge.

Mr. DUNNE. Sir, I can guarantee you we are focused on that.

Senator BURR. Thank you.

Chairman AKAKA. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman.

I too have just one question and it deals with an evidence gathering. It shows that about 60 days are required at this point in time—at least that is what the IBM studies shows—trying to get down to 30 days to gather evidence. Have I misread that? Could you tell me what it really says?

Mr. DUNNE. Sir, the 60 days was a waiting period that we had in place where we would tell the veteran with the VCAA letter, we will wait 60 days for you to send us anything you want to before we act on your claim. By shortening that to 30 days we can act faster.

Senator TESTER. OK. So, the question I had deals more with some folks we are going to hear from in this next panel, the Veterans' Service Organizations.

Are you able to utilize some of their expertise and help in having the vets get information to you more timely? Have you reached out to them, have they reached out to you, are you able to utilize their expertise, because I think they have got access to a lot of information and a lot of people that could help one another?

Mr. DUNNE. Yes, sir, we work very closely with the VSOs. In fact, in our regional offices, many of the VSOs have permanent offices where they are there everyday that we are open to help veterans.

Senator TESTER. Has that been going on for a while?

Mr. DUNNE. It has been going on for a long period of time, yes, sir.

Senator TESTER. Ten years?

Mr. WALCOFF. More than that.

Senator TESTER. OK. I have been sitting here scratching my head because I am trying to figure out—and I know claims volume has gone up some—but 6 months is a little bit too long, and actually 4 months is fine, but it would be nice if it was even shorter than that.

What can we do? There is always a solution for a problem. Efficiency—there has got to be some efficiency gains somewhere in the process and that is all. It is a bit frustrating for me sitting here because I think this Committee and the Senate has done a decent job of getting resources to you guys.

The question is, is there is a hitch somewhere? I mean there is something going on here that is not right that needs to be fixed, and I do not know what the hell it is; and that is the part that is frustrating for me.

Could you just comment on what you think the problem is, ultimately, in the end; and when we can see some significant gains? 60 days is pretty significant considering we picked up 1 day in the last year. Things do not happen all at once in this machine, and Michael, you can answer too if you want. It does not much matter.

Mr. DUNNE. Senator, Mike has a great deal of experience personally doing this and working on claims. I think he might be the best person to answer that one.

Senator TESTER. That is fine.

Mr. WALCOFF. Thank you, admiral.

I think that when you look at the process, the 180 days, as Admiral Dunne said, about probably 65 to 70 percent of those days are involved in development of the evidence, not only looking at a

claim, deciding what evidence is needed, but then going after that evidence and waiting for the evidence to come back.

Under VCAA that 60 days that we give a veteran to submit evidence, we also give 60 days to his doctor. Let us say he comes in and says, I have three doctors that have been treating me. We then will write the doctors and give them 60 days to come back. If the doctor does not reply in 60 days, we then write the veteran and say, we are going to give the doctor another 30 days, and if he does not submit it within 30 days, we will decide the case on the evidence that we have. Now, you are talking about 90 days.

Senator TESTER. This is a private practice doctor for the most part?

Mr. WALCOFF. Right. I guess, Senator, what I would say is the—

Senator TESTER. Just for clarity, you notify the vet when you are sending the doctor a letter?

Mr. WALCOFF. Yes. What will happen is: the veteran has to tell us who he is being treated by; and we also ask him, hopefully when he submits his application, he will submit the privacy form that we are going to need in order to get the information. But if he does not, we then will have to go back to the veteran to get the privacy form.

But, let's say that he does. We will then go out to the doctor and we will say, we understand you have treated Mr. Veteran. Could you please send us his record? Here is the privacy release.

In some cases they act promptly. In other cases we do not hear from them. So, 60 days go by; we diary the case and, ideally, we look at it on the 61st day. I cannot tell you that every office does that, but ideally they would. If it has not come back yet, we then go back out to the doctor and say, you have another 30 days.

Senator TESTER. So, in the 1990's you had 120 days. Is there something in the process that changed between then and now?

Mr. WALCOFF. Yes. The law that causes us to have to do all of that was passed in 2001. That law did not exist in the 1990's.

Senator TESTER. What does that law say?

Mr. WALCOFF. It is the Veterans' Claims Assistance Act. It is a good law. It is a law that was set up to guarantee that veterans have certain rights, that they are protected; and I think that is something we all agree with.

Over the years, the law has been interpreted by the court in various ways that have made it very difficult to administer, which has added time to the process. And that is one of the things that we are looking at in terms of what can we do within our authority, and one of the things was to reduce that waiting time from 60 to 30. That is going to help us a little bit.

The other thing we can do—and this is something that the Texas Veterans' Commission is doing with us in Waco, and this is important—when that doctor does not send anything back, we pick up the phone and call the doctor. We ask, oh, by the way, do you realize that you got a request from us for records? Maybe you did not know that, maybe you have not seen that, but, you know, we would like you take a look and maybe you can then send it back to us because that would enable us to process Mr. Veteran's claims.

So, we have people from the Veterans' Commission making some of those phone calls just to help speed up the process so we do not have to wait for 60 days and then another 30 days. I mean, there are things that we can do administratively to improve. We are not at the point where we are doing every case the next day, but I do believe that certain things that the law requires have changed situations from where it was in the 1990's.

Senator TESTER. Thank you.

Chairman AKAKA. Thank you very much, Senator Tester.

I want to thank our witnesses for your responses. We will have questions that we will send to you.

May I ask, were you done, Senator Tester?

Senator TESTER. Yes, I was done. We will check into the law. We will see what is going on there.

You guys are on the ground. I am not. My only recommendation, I think you are on the right track, calling.

If you do not get it back in 2 weeks, I would call. Actually it should be the vet that calls or maybe the VSO that calls or somebody that calls. But somebody needs to call the doctor, because it can get lost in their bureaucracy too.

Mr. WALCOFF. But, see, under the law, we have a duty to assist. It is our job to assist the veteran in developing that evidence and we do that by asking the doctor for it, and then hopefully calling and following up.

Senator TESTER. Right. You are exactly right. You might be able to cut 2 weeks out of it just by calling them quicker.

Chairman AKAKA. Again, I want to thank our witnesses. It appears that a huge problem is collection of evidence. That takes time and we hope we can find a way of speeding that up.

Again, let me say thank you for our witnesses on the first panel.

I welcome the second panel of witnesses to this Committee. Joining us this morning are Kerry Baker, Disabled American Veterans. David Cox, American Federation of Government Employees. Howard Pierce, PKC Corporation. And William "Bo" Rollins, Paralyzed Veterans of America.

Your full statements will, of course, appear in the record of this hearing; and I again welcome you and ask Mr. Baker to please begin with your statement.

**STATEMENT OF KERRY BAKER, ASSOCIATE NATIONAL  
LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

Mr. BAKER. Mr. Chairman, Ranking Member Burr.

The following suggestions are intended to simplify the claims process by drastically reducing delays caused by superfluous procedures.

One, remove procedural roadblocks to the efficiency in the appeals process. Having Congress amend the law and the mandate would incorporate an automatic waiver of all jurisdiction for any evidence received by VA to include the board after an appeal has been certified to the board. This would eliminate VA's requirement to issue an SSOC every time an appellant submits additional evidence in the appellate stage. It would also help prevent the board from having to remand an appeal just for VA to issue an SSOC. This would free up significant resources in the VA. For example,

VA issued 51,600 SSOCs last year. As of May 2008 they already issued 38,600. Likewise, the board remanded cases for the same reason.

Congress should also amend the law to eliminate the need to wait until after an appellant files an NOD in order to issue an appeal election letter. VA should mail this letter with the original decision. This would eliminate the requirement that VA allow an appellant 60 days to respond to such letter.

The VA currently receives over 100,000 NODs annually. This minor change would eliminate 60 days of delay in every one of those appeals by eliminating VA's requirement to separately mail all 100,000-plus election letters.

These recommendations would have a tremendous effect on VA's appeals workload without the need to expend any governmental resources.

Two, remove duplicative processes from VA's duty to assist. The law has evolved to cause VA to request the same set of records multiple times. Such development procedures cause massive delays in the claims process and feed otherwise empty litigating positions of attorneys.

These requirements can be made more efficient by amending the law to limit VA's requirements that it request no individual private record or set of private records more than once. This will reduce delays in one of the most time-consuming procedures in the process.

Three, Congress should restructure part of the claims development process.

The enactment of VCAA has led to unintended consequences that have proven detrimental rather than beneficial to the claims process. Since VCAA's enactment in November 2000, the court has issued only 17 precedential decisions imposing stringent requirements on content and timing.

The root of the problem is in statutory language, which is far too broad. There is nearly no limit of requirements that can be read into its language. The solution of this problem is to amend the law to state the specific type of basic information VA is required to include in its notice, both in content and timing, and what is not required to be included.

The goal is to ensure language is understandable to the claimant while specific enough to set limits aimed at shielding it from continuous judicial interpretation.

Another problem is that various sections of the law concerning medical opinions are so subjective as to eliminate uniformity in the system and erode enforceable rights of claimants.

For example, claims of service connection are the foundation of VA's benefit system. The crux of the majority of these claims lies in either the claimant or the VA obtaining a medical opinion.

VA's notice requirement should be amended to include specific information concerning the basic elements that render a medical opinion adequate for rating purposes. As a matter of fairness, VA relays this exact information to its own doctors when it seeks medical opinion.

From October 2006 to October 2007, the board remanded 12,269 appeals in order to obtain medical opinions. Far too many were re-

manded for no other reason but for VA to obtain a medical opinion, merely because the appellant had submitted a private medical opinion. Such actions are a complete waste of VA's resources.

Congress should mandate that when claimants submit private medical evidence that is competent, credible and otherwise adequate for rating purposes, VA must decide the case based on such evidence rather than delaying the claim while arbitrarily requesting medical opinions from the agency. This would preserve manpower and budgetary resources, reduce the claims backlog and prevent needless appeals.

Congress should further amend the law to mandate that if VA must request an opinion after a claimant submits a private opinion, then a health care expert of equal qualifications must render such opinion.

Finally, we urge Congress to adopt the treating physician rule as applied by the majority of Federal courts in evaluating Social Security claims. The rule governs the weight accorded to the opinion of a claimant's treating physician relative to other evidence before the fact finder.

This rule is applied to help resolve conflicting medical evidence by giving legal recognition to the assumption that a claimant's treating doctor is the physician best able to present a complete picture of the claimant's medical condition.

A similar role adopted by the VA would provide sound legal structure to an otherwise far too subjective system.

I have outlined some of these suggestions as well as others with great detail in my written testimony and I hope you will take a look at it. I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Baker follows:]

PREPARED STATEMENT OF KERRY BAKER, ASSOCIATE NATIONAL LEGISLATIVE  
DIRECTOR OF THE DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee: I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV), to address undue delays in the Department of Veterans Affairs' (VA) disability claims processing system.

The claims process is extremely complex and often not understood by veterans, some veterans' service representatives, and by many VA employees. Many studies have been completed on timeliness of claims processing yet the delays continue and the frustrations mount for all involved in the process of filing and adjudicating claims and appeals. Therefore, the following suggestions are intended to simplify the claims process by drastically reducing delays caused by superfluous procedures while providing sound structure with enforceable rights, where current law otherwise promotes subjectivity, resulting in large variances in decisionmaking, unnecessary appeals, and overdevelopment of claims.

I. REMOVE PROCEDURAL ROADBLOCKS TO EFFICIENCY IN THE APPEALS PROCESS.

To begin the appeal process, an appellant files a written notice of disagreement (NOD) with the VA regional office (RO) that issued the disputed decision. For most cases, the appeal must be filed within 1 year from the date of the decision. After filing an initial NOD, the VA sends the appellant an appeal election form asking him/her to choose between a traditional appellate-review process by a rating veterans' service representative (RVSR) or a review by a decision review officer (DRO). DROs provide a de novo (brand new decision), review of an appellant's entire file, and they can hold a personal hearing about an appellant's claim. DROs are authorized to grant the contested benefits based on the same evidence in the claim folder that the initial rating board used. The appellant is given 60 days to respond to the appeal election form. See 38 CFR § 3.2600 (2007).

Once the appeal election form is received, the RVSR or DRO (as appropriate) issues a statement of the case (SOC) explaining the reasons for continuing to deny the appellant's claim. A VA Form 9, or substantive appeal form, which is used to substantiate an appeal to the Board of Veterans Appeals ("Board" or "BVA") is attached to the SOC. The VA Form 9 must be filed within 60 days of the mailing of the SOC, or within 1 year from the date VA mailed its decision, whichever is later.

If the appellant submits new evidence or information with the substantive appeal, such as records from recent medical treatment or evaluations, the local VA office prepares a supplemental statement of the case (SSOC), which is similar to the SOC, but addresses the new information or evidence submitted. The VA must then give the appellant an additional 60 days to respond (with any additional evidence, for example) following the issuance of an SSOC. If the appellant submits other evidence, regardless of its content, another SSOC must be issued and another 60 days must pass before the VA can send the appeal to the Board. In many cases, this process is repeated multiple times before a case goes to the Board. In many of those cases, the appellants are simply unaware that they are preventing their appeal from being sent to the Board.

The VAROs are not supposed to submit a case to the Board before the RO has rendered a decision based on all evidence in the file, to include all new evidence. This restriction stems from 38 U.S.C.A. § 7104, which has been interpreted to mean that the Board is "primarily an appellate tribunal" and that consideration of additional evidence in the first instance would violate section 7104 and denies an appellant "one review on appeal to the Secretary," 38 U.S.C.A. § 7104(a) (West 2002 & Supp. 2007); see *Disabled Am. Veterans v. Sec'y of Veterans Affairs*, 327 F.3d 1339, 1346 (Fed. Cir. 2003).

The result of the above is that ROs are forced to issue SSOCs repeatedly in many cases, which merely lengthens the appeal, frustrates the VA, and confuses the appellant. The problem does not end there. If an appellant submits new evidence once the case is at the Board, or if the RO submits a case to the Board with new evidence attached, the Board is prohibited from rendering a decision on the case and is forced to remand the appeal (usually to the Appeals Management Center (AMC)), if for no other reason but for VA to issue an SSOC.

Notwithstanding the above, an appellant can choose to waive the RO's jurisdiction of evidence received by VA after a case has been certified to the Board by submitting a written waiver of RO jurisdiction. In the case of an appeal before the VARO, this results in VA not having to issue an SSOC concerning the newly submitted evidence. In the case of an appeal before the Board, it results in not requiring the Board to remand the case solely for issuance of an SSOC.

The Board amended its regulations in 2004 so that it could solicit waivers in those cases where an appellant or representative submits evidence without a waiver. 38 CFR § 20.1304(c); see 69 Fed. Reg. 53,807 (Sept. 3, 2004). This has helped to avoid some unnecessary remands. The Board's remand rate decreased from 56.8 percent in fiscal year 2004, to 35.4 percent in fiscal year 2007 due in part to these procedures.

The statistical data for appeals in the VA represents a significant amount of its workload. Appellants filed 46,100 formal appeals (submission of VA Form 9) in fiscal year 2006 compared with 32,600 formal appeals in fiscal year 2000. The annual number of BVA decisions, however, has not increased. As a result, the number of cases pending at BVA at the end of fiscal year 2006—40,265—was almost double the number at the end of fiscal year 2000. These numbers are exclusive to appeals at the Board and do not include the substantial number of appeals processed by the appeals teams in VAROs and the AMC.

In fiscal year 2007, the Board physically received 39,817 cases. Despite this number of cases making it to the Board, the VBA actually issued 51,600 SSOCs, a difference of 11,783. As of May 2008, the VBA has already issued 38,634 SSOCs. Likewise, the Board has remanded an additional 1,162 cases solely for the issuance of an SSOC. This number does not include cases wherein the appellant responded to the Board's initiation of a request for waiver of RO jurisdiction, thereby eliminating the requirement for a remand for VBA to issue an SSOC.

The average number of days it took to resolve appeals, by either the Veterans Benefits Administration (VBA) or the Board, was 657 days in fiscal year 2006.<sup>1</sup> This number, however, is very deceptive, as it represents many appeals resolved at the RO level very early into the process. The actual numbers show a picture much

<sup>1</sup>Note: Appeals resolution time is a joint BVA-VBA measure of time from receipt of notice of disagreement by VBA to final decision by VBA or BVA. Remands are not considered to be final decisions in this measure. Also not included are cases returned as a result of a remand by the U.S. Court of Appeals for Veterans Claims.

worse. According the fiscal year 2007 *Report of the Chairman*, Board of Veterans' Appeals, a breakdown of processing time between steps in the appellate process is as follows:

- NOD to receipt of SOC—213 days—VARO;
- SOC issuance to receipt of VA Form 9—44 days—appellant;
- receipt of VA Form 9 to certification to the Board—531 days —VARO;
- receipt of certified appeal to Board decision—273 days—Board;

Total—1,061 days from NOD to Board decision—sadly, many are much longer.

The item of special interest regarding the above numbers, is that the function that should conceivably take the least amount of time actually took the most amount of time—receipt of VA Form 9 to certification to the Board. The reason for this extraordinary time VA spends on a relatively simple task is in part the result of issuing multiple SSOCs.

Congress has the chance to eliminate tens of thousands of man-hours from VA's workload, the cost associated therewith, and to simplify an important part of the claims process with a minor legislative change. This would eliminate, as much as practicable, VA's requirement to issue SSOC's, to include the Board's requirement to remand for the issuance of an SSOC.

#### *Recommendation*

Amend 38 U.S.C.A. §7104 in a manner that would specifically incorporate an automatic waiver of RO jurisdiction for any evidence received by the VA, to include the Board, after an appeal has been certified to the Board following submission of a VA Form 9. This type of amendment would eliminate the VA's requirement to issue an SSOC every time an appellant submits additional evidence in the appellate stage. It would also prevent the Board from having to remand an appeal to the AMC solely for the issuance of an SSOC. Such an amendment should state that the statutory change applies "notwithstanding any other provision of law." This language would prevent any contradiction with other statutes and future confusion caused by any potential judicial review.

Certain safeguards would nonetheless be necessary. VA must still be required to notify the appellant that it received the newly submitted evidence, and whether that evidence changed the outcome of the decision; if so, then the appeal would most likely be resolved. If not, a single-page, automated letter could be issued to the appellant indicating that VA received the newly submitted evidence and that it had no effect on the outcome of the appeal. VA would then not be required to wait an additional 60 days before forwarding the appeal to the Board. If the Board receives evidence not considered by the RO, the Board would have first instance jurisdiction, but only on the newly submitted evidence. That would prevent the Board from having to initiate contact with the appellant to seek a waiver of RO jurisdiction and would prevent a needless remand by the Board.

This type of legislative change could free up significant resources from the VA and the Board that could then be utilized to focus on other causes of delay in the claims process.

#### *Recommendation*

Congress should amend 38 U.S.C. § 5104 (Decisions and Notices of Decisions) subsection (a), to eliminate the need to wait until after an appellant files an NOD in order to issue an appeal election letter. Such an amendment would further eliminate the requirement that VA allow an appellant 60 days to respond to such a letter, thereby shortening every appeal period by 60 days.

The provisions of the foregoing statute states, inter alia, that when VA notifies a claimant of a decision, "[t]he notice shall include an explanation of the procedure for obtaining review of the decision." 38 U.S.C.A. §5104(a). This section could be amended to read: "The notice shall include an explanation of the procedure for obtaining review of the decision, to include any associated appeal election forms." The VA could then modify 38 CFR § 3.2600 accordingly.

The VA currently receives over 100,000 NODs annually. This minor change would eliminate 60 days of undue delay in every one of those appeals and eliminate VA's requirement to separately mail, in letter format, all 100,000 plus appeal election forms. This recommendation, along with the foregoing recommendation, would have a tremendous effect on VA's appeals workload without the need to expend any governmental resources.

II. MODIFY THE COURT'S JURISDICTION TO INSURE EFFECTIVE JUDICIAL REVIEW—ITS CURRENT STANDARD OF REVIEW ADDS TO CLAIM DELAYS.

Over the years, the Court of Appeals for Veterans Claims (Court) has shown a reluctance to reverse errors committed by the BVA. Rather than addressing an allegation of error raised by an appellant, the Court has a propensity to vacate and remand cases to the Board based on an allegation of error made by the VA Secretary, such as an inadequate statement of reasons or bases in the board decision.

Another example occurs when the Secretary argues for remand by the Court because VA failed in its duty to assist the claimant in developing the claim notwithstanding the Board's express finding of fact that all development is complete. Such actions are particularly noteworthy because the Secretary has no legal authority to appeal a Board decision to the Court. 38 U.S.C.A. §7252(a) (West 2002) ("The Court of Appeals for Veterans Claim shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision.").

These types of defend-to-the-death characteristics by counsel are not at all surprising in most settings. However, they can easily rise to a level of inappropriateness in the setting at hand. The United States Court of Appeals for the Federal Circuit has addressed the American Bar Association's Model Code of Professional Responsibility, which expressly holds a government lawyer in a civil action or administrative proceeding to higher standards than a private lawyer. A government lawyer has "the responsibility to seek justice." *Freeport-McMoRan Oil & Gas Co. v. F.E.R.C.*, 962 F.2d 45, 47 (1992). In other words, the government lawyer should not attempt to "win at any cost." The Court has drawn attention to the fact that the VA General Counsel's function of representing the Department also extends to veteran claimants, that the General Counsel should "look at all sides of the case," and is obligated "to see that the veteran gets what he or she is entitled to." *Johnson v. Broun*, 7 Vet. App. 95, 98 (1994). Furthermore, the General Counsel should "suggest remand where indicated" and "attempt to 'settle cases'" where appropriate. *Id.*

Nonetheless, the Court will generally decline to review alleged errors raised by an appellant that actually serve as the basis of the appeal. Instead, the Court remands the remaining alleged errors on the basis that an appellant is free to present those errors to the Board even though an appellant may have already done so, leading to the possibility of the Board repeating the same mistakes on remand that it had previously. Such remands leave errors by the Board, and properly raised to the Court, unresolved; reopen the appeal to unnecessary development and further delay; overburden a backlogged system already past its breaking point; exemplify far too restrictive and out-of-control judicial restraint; and inevitably require an appellant to invest many more months and perhaps years of his or her life in order to receive a decision that the Court should have rendered on initial appeal. As a result, an unnecessarily high number of cases are appealed to the Court for the second, third, or fourth time.

This type of judicial restraint is highly ineffective. It serves neither the VA nor its clientele any favorable purpose. It is merely a judicially created law that only serves the Court. The practice is rooted in the *Best* decision, which held: "A narrow decision preserves for the appellant an opportunity to argue those claimed errors before the Board at the readjudication, and, of course, before this Court in an appeal, should the Board rule against him." *Best v. Principi*, 15 Vet. App. 18, 20 (2001). The Court's language, couched speciously in a favorable tone, in practice is but a fallacy. The idea that an issue not addressed by the Court, regardless of how well framed, is better for the appellant if preserved for the Board to take a second proverbial bite at the apple is nonsensical.

The *Best* doctrine has been invoked no less than 1,123 times since 2001. Many of those cases have returned to the Court repeatedly. That represents significant VA resources that could have been spent on resolving original appeals rather than making the same decision on the same case for a second, third, or fourth time. Such a result is inevitable following a Court vacate/remand containing no judicial guidance whatsoever.

In addition to postponing decisions and prolonging the appeal process, the Court's reluctance to reverse BVA decisions provides an incentive for VA to avoid admitting error and settling appeals before they reach the Court. By merely ignoring arguments concerning legal errors rather than resolving them at the earliest stage in the process, VA contributes to the backlog by allowing a greater number of cases to go before the court. If the Court were to address all properly raised assignments of error, more appeals would be reversed, which would discourage VA from standing firm on decisions that are likely to be overturned or settled late in the process.

*Recommendation*

Congress should amend the Court's jurisdiction to require that it decide all assignments of error properly presented by an appellant. There is currently a bill in the house (H.R. 5892) that would amend 38 U.S.C.A. § 7252(a) to require the Court to decide assignments of error when properly raised. H.R. 5892 would add the following to section 7252(a):

The Court shall have power to affirm, modify, reverse, remand, or vacate and remand a decision of the Board after deciding all relevant assignments of error raised by an appellant for each particular claim for benefits. In a case in which the Court reverses a decision on the merits of a particular claim and orders an award of benefits, the Court need not decide any additional assignments of error with respect to that claim.

This type of statutory amendment would have very positive impact in many ways, not the least of which would prevent the Court from arbitrarily remanding appeals without addressing an appellant's primary reason for appealing to the Court in the first place. This in turn would prevent the Board from rendering the exact same erroneous decision as it previously issued. The result is less undue delay in the claims process.

The DAV fully supports this bill and requests the Senate initiate similar legislation.

### III. CONGRESS SHOULD SIMPLIFY, SOLIDIFY, AND PROVIDE STRUCTURE TO THE VA CLAIMS DEVELOPMENT PROCESS.

In order to understand the complexities, the bureaucratic and procedural dilemmas, and the bewildering nature of the claims process and how these characteristics unduly delay accurate and lawful conclusion of claims, one must focus on the individual processes and how they affect the program as a whole. Whether through uncontrolled judicial orders, continuously repeated mistakes that cause frequent variances in decisionmaking, or inherent unfairness accidentally built into the system, portions of the claims processing system have become far too complex, very loosely structured, and too open to the whims of VARO-level personal discretion. By solidifying and properly structuring these processes, Congress can build on what otherwise works.

#### A. PROVIDE SOLID, NONDISCRETIONARY STRUCTURE TO VA'S "DUTY TO NOTIFY."

The law regarding VA's requirement to provide notice to claimants of information needed to complete their claim is found in title 38, United States Code, section 5103, otherwise known as VA's "duty to notify." Section 5103(a) states:

Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title [38 USC § 5103A] and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

38 U.S.C.A. § 5103. See Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. 106-475, 114 Stat. 2096 (Nov. 9, 2000). The enactment of this section was well intended. It has nonetheless led to unintended consequences that have proven detrimental, rather than beneficial, to the claims process. Essentially, the language of section 5103(a) has led to such a procedural quagmire that it is not fulfilling its intended benefit to VA claimants.

Many Court decisions have significantly expanded VA's statutory duty to notify, in terms of both content and timing of that notice. These decisions have long-term implications. The Court has mandated specific content of VA's notice to claimants that impose both highly complex and problematic duties in a claims system that was designed to be informal—continual rework and re-notice has become unavoidable. Since VCAA's enactment in November 2000, the Court has issued at least 17 precedential decisions imposing stringent requirements of content and timing.

Although VCAA has been in effect for 6 years, the Court continues to expand and interpret it. In early 2006, a Court ruling required VA to send more than 450,000 supplemental notice letters.

Despite the foregoing, the DAV does not fault the Court for doing its job, nor do we fault Congress for enacting legislation meant to assist VA claimants. The root

of the problem is that the statutory language is far too broad. There is nearly no limit of requirements that can be read into its language.

The Court, on the other hand, recognizes VA's benefits system as a veteran-friendly, pro-claimant, and non-adversarial process for providing benefits to our Nation's disabled veterans. It has, since the enactment of VCAA, been interpreted by the Court as broadly as possible. For example, by direction of the Supreme Court, ambiguity in a veterans' benefits statute must be resolved in favor of the claimant. *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (directing that reasonable doubt in statutory interpretation is to be "resolved in the veteran's favor"). Moreover, it is a long-standing maxim of statutory interpretation that remedial legislation, is to be interpreted broadly in order to effectuate its basic purpose. See *Smith (William) v. Brown*, 35 F.3d 1516, 1525 (Fed. Cir. 1994) ("courts are to construe remedial statutes liberally to effectuate their purposes \* \* \* and veterans' benefits statutes clearly fall in this category").

When Congress writes legislation that is less than completely clear, it is the judiciary's role to make the best of the language that is enacted and to seek to find a reasonable interpretation of the statutory text consistent with the goals that Congress has indicated it sought to achieve with that legislation. If, after undertaking this analysis, the only reasonable conclusion is that Congress, notwithstanding its intention, failed to provide statutory language that can be fairly interpreted as achieving its basic legislative purpose should a court tell Congress "nice try, but you haven't done the job you apparently intended to do." However, those interpretations have actually done more to add to procedural requirements than they have ever done to resolve cases.

#### *Recommendation*

The solution behind the notice problem is somewhat simple: amend section 5103 to state the specific type of information VA is required to include in its notice, in both content and timing. The goal is to ensure such language is helpful and understandable to the claimant while specific enough to set limits aimed at shielding it from continuous judicial interpretation.

Any such amendment should specify that the notice requirements contained in section 5103 apply to benefits under title 38, chapters 11, 13, and 15 (i.e., disability compensation, dependency and indemnity compensation, and pension). Further, while we will not suggest verbatim how the statutory language should be amended, we nonetheless have some specific suggestions.

The premise behind section 5103 should be that VA is required to provide the claimant notice of the "basic" type of information necessary to substantiate a claim, (for clarity, "basic" should be defined in the statute, i.e., "starting point"). The statute should also indicate that VA "may," "but is not required" to provide additional evidence as it finds necessary so as not to tie the agency's hands should it decide to expand its notice.

The statute should also be clear as to what evidence the notice should not include, such as: (1) information concerning effective dates unless such is the basis of the claim; (2) individual diagnostic code rating criteria; (3) methods of determining applicable diagnostic codes to include information concerning VA's rating scale (this information can be explained in a rating decision); and, any other criteria that is determined extraneous and/or confusing to the claimant. Despite our foregoing general advice, we must explain our suggested notice requirements for most claims of service connection somewhat more thoroughly.

Service connection connotes many factors; however, it essentially means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. See 38 CFR §3.303(a) (2007). Establishing service connection generally requires: (1) medical evidence of a current disability; (2) medical evidence, or, in certain circumstances, lay evidence of in-service incurrence or aggravation of a disease or injury; and (3) medical evidence of a nexus between the claimed in-service disease or injury and the present disease or injury. *Hickson v. West*, 12 Vet. App. 247, 253 (1999); see 38 CFR §3.303(a). In some cases, continuity of symptoms between the time of discharge and the claim will suffice in the absence of a medical nexus between service and the disability. See 38 CFR §3.303(b).

Claims of service connection are the foundation of VA's benefits system. Service connection and increased-rating claims easily make up the bulk of VBAs work, but the notice required for an increased-rating claim is less controversial and not the subject here. The subject is part of the notice that should be required for service connection claims. The crux of a majority of these claims lies in either a claimant or the VA obtaining a medical opinion. In fact, there are nearly entire volumes of

Veterans Appeals Reporters filled with case law regarding the subject of medical opinions, i.e., who is competent to provide them, when are they credible, when are they adequate, when are they legally sufficient, when or which ones are more probative, etc. Yet, the one group of people that still understand VA's requirements concerning medical opinions the least are its claimants.

The issue of medical opinions could easily be a subject of its own, but in the context of undue delay in the claims process, there is ample room to improve the law concerning medical opinions in a manner that would bring noticeable efficiency to VA's claims process. It must start with VA's notice requirements under section 5103.

When VA issues a VCAA letter under its current notice requirements, the letter, if addressing the issue of service connection, normally informs a claimant that he/she may submit their own medical opinion. Such letter also states that VA may obtain one for them. Likewise, most claimants understand the requirement for a medical opinion linking their current disability to their military service. In accordance with the foregoing suggested amendments to section 5103, VA should be required to inform a claimant filing for service connection the basic elements needed to substantiate the claim, one of those elements being the necessity for a medical opinion.

However, a bare statement advising a claimant of the need for a medical opinion should not suffice. Such a bare statement would also do nothing to solve the continuous problems caused by claimants' poor understanding of proper medical opinion adequacy. The VA's notice requirements should be amended to include specific information concerning the basic elements that render a medical opinion adequate for rating purposes, i.e., a medical statement indicating what records (e.g., service medical records, copy of VA claims file, etc.) were reviewed in reaching the opinion, a medical rationale for the opinion, and a conclusion to the opinion stated in terms of "as likely as not," "more likely than not," or "less likely than not" rather than "maybe," "possibly," or "could be."

As a matter of fairness, the VA does relay this exact information to its own doctors when it seeks a medical opinion. If VA claimants were aware of what constitutes a medical opinion adequate for rating purposes, it would prevent the VA from having to delay a decision on the claim by seeking its own opinion. This would also reduce the numerous appeals that result from conflicting medical opinions—appeals that are ultimately decided in an appellant's favor more often than not.

If Congress amends 38 U.S.C. § 5103 as requested above, it should also amend section 5103A(d)(1), which currently states: "In the case of a claim for disability compensation, the assistance provided by the Secretary under subsection (a) shall include providing a medical examination or obtaining a medical opinion when such an examination or opinion is necessary to make a decision on the claim." A sentence should be added to section 5103A(d)(1) that states: "However, when a claimant submits private medical evidence, to include a medical opinion, that is competent, credible, probative, and otherwise adequate for rating purposes in accordance with sections 5103 and 5125 [section 5125 to be discussed below] of this title, the Secretary shall not request such evidence from a Department health care facility."

While some may view the foregoing suggestion as tying VA's hands with respect to private medical evidence, or more specifically, medical opinions, it does not nor is it our intention to do so. The new language suggested above concerning section 5103A(d)(1) would not bind the VA to accepting such private evidence if it finds the evidence is, for example, not credible or not adequate for rating purposes. The goal is, as discussed below, to eliminate overdevelopment of claims.

#### B. REMOVE DUPLICATIVE PROCESSES FROM VA'S "DUTY TO ASSIST."

VA claimants should be encouraged to participate in the development of their own claims to the extent possible. Apart from filling out an application, one of the easiest functions that a claimant can perform happens to be the cause of some of the longest delays in the claims process—obtaining private records. While this function can sometimes prove difficult for unrepresented claimants who are very elderly, severely disabled, or incompetent, most claimants can easily obtain their own private records. In fact, most claimants prefer to do so as they can then ensure the VA receives the pertinent records.

The VA will obtain these types of records for a claimant. However, undue delays in the claims process arise out of statutory and regulatory requirements that cause the VA to request the same private treatment records repeatedly. The pertinent section of the VA's "duty to assist" statute, 38 U.S.C.A. § 5103A(b) states:

(b) Assistance in obtaining records.—(1) As part of the assistance provided under subsection (a), the Secretary shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.

(2) Whenever the Secretary, after making such reasonable efforts, is unable to obtain all of the relevant records sought, the Secretary shall notify the claimant that the Secretary is unable to obtain records with respect to the claim. Such a notification shall—

- (A) identify the records the Secretary is unable to obtain;
- (B) briefly explain the efforts that the Secretary made to obtain those records; and
- (C) describe any further action to be taken by the Secretary with respect to the claim.

38 U.S.C.A. § 5103A(b) (West 2002 & Supp. 2007).

The VA promulgated a regulation concerning the above statutory requirements that states:

Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal Governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request \* \* \*.

38 CFR § 3.159(c)(1) (2007).

These provisions of law have evolved to cause the VA to request the same set of records multiple times, usually to no avail. Alternatively, when such attempts fail, the pertinent private records are usually submitted by the claimants themselves. These duplicative development procedures cause massive delays in the claims process and feed otherwise empty litigating positions of many attorneys representing appellants before the Court. The latter, just as in litigating positions regarding the VA's "duty to notify," continues to result in numerous judicial precedent that merely adds hollow procedures to the VA's development requirements.

#### *Recommendation*

The undue delays caused by these requirements can be made much more efficient by amending section 5103A(b) to limit the VA's requirement that it request no individual private record or set of private records more than once. This would reduce by hundreds of thousands the number of duplicative letters mailed by VA.

#### C. PREVENT OVERDEVELOPMENT OF CLAIMS.

Numerous developmental procedures in the VA claims process collectively add undue delay in the claims process. For example, rather than making timely decisions on C&P claims when evidence development may be complete, the VA routinely continues to develop claims. These actions lend validity to many veterans' accusations that whenever VA would rather not grant a claimed benefit, VA intentionally overdevelops cases to obtain evidence against the claim. Despite these accusations, a lack of adequate training is just as likely the cause of some overdevelopment.

Such actions result in numerous appeals, followed by needless remands from the Board and/or the Court. In many of these cases, the evidence of record supports a favorable decision on the appellant's behalf yet the appeal is remanded nonetheless. These unjustified remands usually do nothing but perpetuate the hamster-wheel reputation of veterans' law. In fact, the BVA is guilty of remanding an untold number of appeals solely for unnecessary medical opinions. From October 2006 to October 2007, the Board remanded 12,269 appeals in order to obtain medical opinions. While many were legitimate, far too many were remanded for no other reason but to obtain a VA medical opinion merely because the appellant had submitted a private medical opinion. Such actions are a complete waste of VA's resources.

The foregoing amendments to section 5103A(d)(1) suggested in "III.A." of this testimony would have a significant positive effect on this problem. Essentially, VA requests unnecessary medical opinions in cases where the claimant has already submitted one or more medical opinions that are adequate for rating purposes. VA claimants desiring to secure their own medical evidence, including a fully informed medical opinion, are entitled by law to do so. If a claimant does secure an adequate medical opinion, there is no need in practicality or in law for VA to seek its own opinion. Congress enacted title 38, United States Code, section 5125 for the express purpose of eliminating the former 38 Code of Federal Regulations, section 3.157(b)(2) requirement that a private physician's medical examination report be verified by an official VA examination report prior to an award of VA benefits. Section 5125 states:

For purposes of establishing any claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter *may* be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim. [Emphasis added]

38 U.S.C.A. § 5125 (West 2002). Therefore, Congress codified section 5125 to eliminate unnecessary delays in the adjudication of claims and to avoid costs associated with unnecessary medical examinations.

Notwithstanding the elimination of 38 CFR § 3.157, and the enactment of 38 U.S.C.A. § 5125, VA consistently refuses to render decisions in cases wherein the claimant secures a private medical examination and medical opinion until a VA medical examination and medical opinion are obtained. Such actions are an abuse of discretion that delay decisions and prompt needless appeals. When claimants submit private medical evidence that is competent, credible, and otherwise adequate for rating purposes, Congress should mandate that VA must decide the case based on such evidence rather than delaying the claim by arbitrarily and unnecessarily requesting additional medical examinations and opinions from the agency. Such enactment will preserve VA's manpower and budgetary resources; help reduce the claims backlog and prevent needless appeals; and most importantly, better serve disabled veterans and their families.

#### *Recommendation*

Congress should amend title 38, United States Code, section 5125, insofar as it states that a claimant's private examination report "may be accepted \* \* \* if \* \* \* the report is sufficiently complete to be adequate for the purpose of adjudicating such claim." The foregoing statutory language should be amended to read that a claimant's private examination report, including medical opinion, "must be accepted \* \* \* if \* \* \* the report is (1) provided by a competent health care professional, (2) probative to the issue being decided, (3) credible, and (4) otherwise adequate for the purpose of adjudicating such claim."

#### D. RESTORE FAIRNESS TO THE CLAIMS PROCESS.

In order for us to reach the conclusion regarding this recommendation, we must explain the story of James Halvatgis. Mr. Halvatgis served approximately 25 years of honorable service. He was diagnosed with a right lumbar strain following a lifting injury in February 1963. Mr. Halvatgis also hurt his back when he fell approximately 20 feet while rappelling and then again in a jeep accident when he was thrown from the vehicle while swerving to avoid a landmine in Vietnam.

He reported low back pain in July 1966, December 1968, September through November 1973, September through October 1974, and again in 1976. Many of these symptoms spanned months at a time and were accompanied by neurological symptoms indicating nerve involvement. X-rays of the veteran's low back taken prior to military discharge revealed minimal sacralization of the L5 with secondary slight narrowing of the L5-S1 (i.e., stenosis), spina bifida occulta of the S1 segment and slight right scoliosis.

Numerous private treatment records following discharge continued to document a definite back disability. A board-certified orthopedic surgeon, who was also an Associate Professor of Orthopedic Surgery, diagnosed degenerative joint disease of the lumbar spine with spinal stenosis. The VA subsequently received a medical opinion from this same orthopedic surgeon wherein he stated that he felt that the veteran had symptoms since the 1960's with respect to his low back and opined that in all likelihood, the Vietnam War injuries contributed to his early onset of arthritis and spinal stenosis.

Mr. Halvatgis filed a claim of service connection for his low back condition in January 2002 wherein he explained in detail the circumstances of his injuries during service. Mr. Halvatgis explained how his fall during rappelling training produced severe pain in the neck and back, but that he was scheduled to graduate from Ranger school the following day. The veteran further explained that he did not seek medical treatment despite the pain he experienced as he did not want to jeopardize his chances of graduating from Ranger school. Mr. Halvatgis also explained the circumstance surrounding the jeep accident. He indicated that when thrown from the jeep he landed on his head, neck, shoulders, and back.

Mr. Halvatgis submitted a statement to VA that all doctors who provided statements regarding his claims were afforded one complete copy of his service medical records. In April 2002, the VA received another medical opinion from a second board-certified orthopedic surgeon, who again was also an Associate Professor of Or-

thopedic Surgery. This physician stated that he had treated Mr. Halvatgis since March 1993 for chronic back problems and that he had also reviewed the veteran's service medical records. The physician opined that the veteran's "condition is a continuation of the difficulties he developed in the service."

The veteran submitted a second medical (totaling three) opinion from one of the surgeons that stated the low back pain Mr. Halvatgis complained of while in the military "gradually progressed to the point where he now has post-traumatic arthritis of the lumbar spine." A second opinion from the other surgeon (totaling four) was submitted that stated, "[h]e had problems dating back to 1974 when \* \* \* he was noted to have collapse, narrowing, and degeneration at the L5-S1 level. I have reviewed his medical service record which indicates this difficulty to that point in time."

In developing the claim, the VA conducted an examination of Mr. Halvatgis, in which it asked for a medical opinion, despite the opinions already of record. The examination, to include the medical opinion was performed by a non-certified physician assistant ("PA" rather than "PA-C"). Without referring to all of the treatment records in service, and without acknowledging the evidence that included four opinions presented by the two orthopedic surgeons, the physician assistant opined that Mr. Halvatgis' condition was congenital and otherwise age related, and therefore not related to his service. Based on the physician assistant's opinion, the VA denied the claim.

Mr. Halvatgis appealed to the Board. After reviewing all the evidence from the SMRs, the private medical evidence and medical opinions based on the veteran's service records from two board-certified orthopedic surgeons, together with one medical opinion from a non-certified physician assistant, the Board found that there was "no competent evidence linking the veteran's low back disorder with his service \* \* \*." The Board arbitrarily provided the physician assistant's opinion more probative value simply because that examiner had reviewed the veteran's claims file, despite the fact that each orthopedic surgeon had reviewed Mr. Halvatgis' SMRs (the remainder of evidence in the claims file was mostly the private treatment records that were actually from the treating orthopedic surgeons).

Mr. Halvatgis appealed to the Court. See *Halvatgis v. Mansfield*, No. 06-0149, 2007 WL 4981384 (U.S. Vet. App., November 2, 2007). Because of the Board's nearly unreviewable authority to assign probative value as arbitrarily as it sees fit, regardless of how abusive, and because of the Court's refusal to reverse such ludicrous decisions if they contain the slightest scintilla of plausibility, the Court denied Mr. Halvatgis' claim of service connection for his back condition.

Unfortunately, cases such as this are not at all uncommon. A combination of reasons explains the inherent unfairness displayed in Mr. Halvatgis' case, to include countless others like his. Part of the problem is because a claimant's statutory right to the benefit of the doubt in cases like this (see 38 U.S.C.A. § 5107), has been converted by the Court's jurisprudence to nothing more than meaningless window dressing consisting only of smoke and mirrors. See *The Independent Budget's* Judicial Review section for a complete explanation of the flaws concerning the benefit of the doubt.

Another reason, as explained above, is that the Board has nearly unreviewable authority to assign probative value to evidence. The Board is fully aware that its power to assign such value to evidence is practically untouchable; therefore, rather than using that power to ensure fairness and objectivity when reviewing evidence, it consistently yields it as a proverbial double-edged sword to marginalize and minimize evidence to fit its own subjective view.

Each of the above problems is significant in and of itself—each deserves attention from this Committee. Nonetheless, the root of these problems lies in the inefficient, sometimes unfair, and far too subjective processes for obtaining medical opinions in the VA's benefits system. As unfair, unlawful, and subjective as the circumstances in Mr. Halvatgis' case are, and as many problems that exist between the Board and the Court regarding this subject, the procedural mess and undue delays effect far more cases at the VARO level. Improving the process locally will have a positive ripple effect throughout the system.

#### *Recommendation*

Congress should further amend section 5103A to indicate that in circumstances where a claimant submits a private medical opinion in accordance with the remainder of sections 5103A, 5103, and 5125 (if amended in accordance with suggestions herein), and that where the VA finds such medical opinion competent, credible, and probative, but otherwise not entirely adequate for rating purposes, and based on such finding decides to obtain a medical opinion from a Department health care provider, such opinion shall be obtained from a medical expert with equal qualifications

as that of the private health care provider who rendered the private medical opinion on behalf of the claimant. Mr. Halvatgis' case, and thousands of others like his, serves as a perfect example for such a change in law.

Mr. Halvatgis took an active role in the development of his own case by obtaining evidence from multiple physicians of the highest stature; in turn, the VA obtained a contradictory opinion from a non-certified physician assistant, which are some of the lowest qualified professionals in the health care field.<sup>2</sup>

In order to qualify as a physician assistant under current VA standards, the minimum requirements are 12 months of formal training, certified by ARC-PA, and what is otherwise on-the-job training. See VA Handbook 5005, Part II, Appendix G8 (April 2002). Additionally, while the VA, the Board, and the Court generally recognized physician assistants as having authority to render medical opinions, the Veterans Health Administration (VHA) has not. VA prescribed utilization of physician assistants in VHA Directive 2004-029.

That Directive contains VA's published "Physician Assistant Scope of Practice," which does not authorize physician assistants to provide medical opinions on any issue. Performing routine physical examinations are authorized; providing medical opinions are not. Yet the practice continues. Nonetheless, please understand that DAV is not advocating that physician assistants not be allowed to render opinions, but they certainly should not be allowed to counter the opinions of one or more Board-certified experts, especially when each opinion is based on a review of the exact same evidence.

#### E. REVERSE VA'S REJECTION OF THE TREATING PHYSICIAN RULE.

Appellants and many legal advocates have long urged the Court to adopt the "treating physician rule" (the Rule), as applied by the majority of Federal courts in evaluating claims for disability benefits under the Social Security Act. 42 U.S.C.A. § 301 et seq. The Rule "governs the weight to be accorded to the medical opinion of the claimant's treating physician relative to other evidence before the factfinder, including the opinions of other physicians." *Schisler v. Heckler*, 787 F.2d 76, 81 (2nd Cir. 1986). In *Schisler*, the United States Court of Appeals for the Second Circuit stated the "Rule" as follows:

[The] treating source's opinion on the subject of medical disability, i.e., diagnosis and nature and degree of impairment, is (i) binding on the factfinder unless contradicted by substantial evidence; and (ii) entitled to some extra weight, \* \* \* although resolution of genuine conflicts between the opinion of the physician, with its extra weight, and any substantial evidence to the contrary remains the responsibility of the fact-finder.

*Schisler*, 787 F.2d at 81.

The "Rule" was formulated specifically to address problems generated by the Social Security system, where the factfinder must weigh the diagnosis of a claimant's physician against the opinions of Social Security's consulting physicians. The Rule is applied to help resolve conflicting medical evidence by giving legal recognition to the assumption that a Social Security claimant's own treating doctor is the physician best able to present a complete picture of the claimant's medical condition. A similar rule adopted by the VA would provide sound legal structure to an otherwise far too subjective system insofar as medical opinions within the VA are concerned.

The Social Security Administration's "Rule" is grounded in statute. 42 U.S.C.A. § 423(d)(5)(B). Since the VA has no equal statute, the VA's General Counsel has argued in return that VA should not adopt the "Rule." See *Guerrieri v. Brown*, 4 Vet. App. 467, 471-73 (1993). It is rather surprising given the non-adversarial, pro-claimant, veteran-friendly system that the VA touts, that any valid argument exists for not adopting such a rule in title 38. This is especially true considering the anti-veteran tactics displayed in the *Halvatgis* case.

Congress should also be aware that, as in other recommendations herein concerning medical opinions, that we do not desire to tie the VA's hands. If a claimant's treating-physician medical opinion is not adequate as discussed herein, then the VA should not be bound to accept it. Likewise, if such an opinion is genuinely contradicted by evidence of obvious greater probative value, then the VA should not be bound by the opinion.

<sup>2</sup>Physician Assistants receive approximate 2 years of training, less in some circumstances. See <<http://www.aapa.org/geninfo1.html>> and U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, at <<http://www.bls.gov/oco/ocos081.htm>>

*Recommendation*

Congress should add a subsection to section 5125 that adopts a treating physician rule, whether such physician happens to be a private or VA health care provider. Consideration of a claimant's evidence from his/her treating physician would be subject to the suggested amendment herein to sections 5103, 5103A, and 5125.

IV. THE VA MUST ADDRESS ITS PROBLEMS WITH ACCOUNTABILITY.

We have consistently stated that quality is the key to timeliness. Timeliness follows from quality because omissions in record development, failure to afford due process, and erroneous decisions require duplicative work, which add to the load of an already overburdened system. Quality is achieved with adequate resources to perform comprehensive and ongoing training, to devote sufficient time to each case, and to impose and enforce quality standards through effective quality assurance methods and accountability mechanisms.

One of the most essential resources is experienced and knowledgeable personnel devoted to training. More management devotion to training and quality requires a break from the status quo of production goals above all else. In a 2005 report from VA's Office of Inspector General, VBA employees were quoted as stating: "Although management wants to meet quality goals, they are much more concerned with quantity. An RVSR is much more likely to be disciplined for failure to meet production standards than for failing to meet quality standards;" and that "there is a lot of pressure to make your production standard. In fact, your performance standard centers around production and a lot of awards are based on it. Those who don't produce could miss out on individual bonuses, etc."<sup>3</sup>

In addition to basing awards on production, the DAV strongly believes that quality should be awarded at least on parity with production. However, in order for this to occur, VBA must implement stronger accountability measures for quality assurance.

VA's quality assurance tool for compensation and pension claims is the Systematic Technical Accuracy Review (STAR) program. Under the STAR program, VA reviews a sampling of decisions from regional offices and bases its national accuracy measures on the percentage with errors that effect entitlement, benefit amount, and effective date.

Inconsistency signals outright arbitrariness in decisionmaking, uneven, or overall insufficient understanding of governing criteria or rules for decisions or rules that are vague or overly broad to allow them to be applied according to the prevailing mindset of a particular group of decisionmakers. Obviously, VA must detect inconsistencies before the cause or causes can be determined and remedied.

Simply put, there is a gap in quality assurance for purposes of individual accountability in quality decisionmaking. In the STAR program, a sample is drawn each month from a regional office workload divided between rating, authorization, and fiduciary end-products. For example, a monthly sample of "rating" related cases generally requires a STAR review of 10 rating-related end products.<sup>4</sup> Reviewing 10 rating-related cases per month for an average size regional office, an office that would easily employ more than three times that number of raters, is undeniable evidence of a total void in individual accountability. If an average size regional office produced only 1,000 decisions per month, which we feel is quite conservative, the STAR program would only review 1 percent of the total cases decided by that regional office. Those figures leave no room for trend analysis, much less personal accountability.

Another method of measuring the VA's need for more accountability is an analysis of the Board's Summary of Remands, while keeping in mind that its summary represents a statistically large and reliable sample of certain measurable trends. The examples must be viewed in the context of the VA (1) deciding 700,000 to 800,000 cases per year; (2) receives over 100,000 NODs; and (3) submits 40,000 appeals to the Board. The examples below are from October 2006 to October 2007.

Remands resulted in 998 cases because no "notice" under section 5103 was ever provided to the claimant. The remand rate was much higher for inadequate or incorrect notice; however, considering the confusing (and evolving) nature of the law concerning "notice," we can only fault the VA when it fails to provide any notice.

VA failed to make initial requests for SMRs in 667 cases and failed to make initial requests for personnel records in 578 cases. The number was higher for additional record requests following initial. This number is disturbing because initially

<sup>3</sup>Department of Veterans Affairs Office of Inspector General, *Rep. No. 05-00765-137, Review of State Variances in VA Disability Compensation Payments* 61 (May 19, 2005).

<sup>4</sup>See M21-4, Ch. 3, § 3.02.

requesting a veteran's service records are the foundation to every compensation claim. It is claims development 101.

The Board remanded 2,594 cases for initial requests for VA medical records and 3,393 cases for additional requests for VA medical records. The disturbing factor here is that a VA employee can usually obtain VA medical records without ever leaving the confines of one's computer screen.

Another 2,461 cases were remanded because the claimant had requested a travel board hearing or video-conference hearing. Again, there is a disturbing factor here. A checklist is utilized prior to sending an appeal to the Board that contains a section that specifically asked whether the claimant has asked for such a hearing.

The examples above totaled 7,298 cases, all of which cleared the local rating board and the local appeals board with errors that are elementary in nature. Yet they were either not detected or they were ignored. The problem with the VA's current system of accountability is that it does not matter if they were ignored because those that commit such errors are usually not held responsible. They therefore have no incentive to concern themselves with the quality of their work. Above all else, these figures showing that the VA's quality assurance and accountability systems require significant enhancement.

To recap the various issues regarding medical opinions mentioned herein in relation to the above analysis, the numbers in all categories of remands are completely overshadowed in comparison to the total number of remands for initial and/or subsequent medical opinions—12,269.

#### *Recommendation*

Congress should authorize the formation of a committee comprised of congressional staff from the House and Senate Committees on Veterans Affairs, select personnel from service organizations, and key employees of the Department with a defined purpose of establishing a quality assurance and accountability program that will detect, track, and hold responsible those VA employees who commit egregious errors.

#### CONCLUSION

The recommendations herein have been formulated from a perspective of "building on what works." With the potential exception of the last recommendation, all other recommendations are highly cost effective, in both monetary resources and human resources—they will not require expenditure of any additional appropriations. Additionally, no recommendation herein relaxes any burden of proof or provides for any benefit not already provided in law.

We are confident these recommendations, if enacted, will help simplify the confusing claims process, will make efficient its cumbersome procedures, and drastically reduce undue delays in the claims process. It has been a pleasure to appear before this honorable Committee today.

Chairman AKAKA. Thank you very much.  
Mr. Cox.

#### **STATEMENT OF J. DAVID COX, R.N., NATIONAL SECRETARY-TREASURER, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Mr. COX. Chairman Akaka, Ranking Member Burr and Members of the Committee. Thank you for the opportunity to share the views of VBA front-line employees on ways to improve claims processes.

AFGE is the sole representative of employees who work on the floor to respond to veterans' inquiries and develop and rate their cases.

The current backlog in processing delays is a disservice to veterans and unacceptable to AFGE members.

We want to assist you in any way we can to alleviate this growing problem. VBA employees who process claims acquire their skills entirely through on-the-job training unlike VA registered nurses such as myself who attended professional schools. Therefore, experienced VBA employees are in a unique position to evalu-

ate VBA training, skill certification tests, CPI implementation and IT tools.

Thus, it was very disheartening to learn that VBA contracted with IBM to do a study on claims process improvement—to survey 583 management employees and zero front-line employees. This sends the message that VBA believes that front-line employees have zero insight into how to improve the claim processes.

At least, the IBM study is consistent with VBA's practice of excluding front-line employees and their representatives from national groups addressing training, performance standards, and other aspects of the claims process.

Locally, managers also refused to consider suggestions made by employees. These days they want one thing from their workforce—make the numbers.

In contrast, GAO's May 2008 study on VBA training solicited the views of front-line employees and AFGE. As a result, GAO's findings on training are more informative. For example, the need for better evaluation of training and more consistency among different instructors and the need to ensure that training is not cut short by workload pressures.

AFGE supports GAO's findings that staff should be held more accountable for meeting their training requirements. However, this recommendation should be considered in conjunction with GAO's other findings: that there is a constant struggle between office production goals and training goals.

By far, the greatest factor preventing employees from completing required training is demand from pressured managers to work the cases, not lack of employees motivation. In fact, on any given day, you will find that VA employees are using their breaks and lunch hours to master new materials. Studying at home after hours is also a very common practice.

AFGE thanks this Committee for its role in bringing 3100 new employees to VBA. Now, the challenge is to use them effectively and retain them. More realistic production quotas will reduce attrition and burn out. A work credit system that recognizes quality as well as quantity, and adjusts for complex and multiple issue cases, will reduce management's incentive to cut short critical on-the-job training.

A more professional approach to training is also needed. Trainers do not always know their subject matter well enough and often lack good teaching skills.

In addition, despite VBA's centralized training program, ROs have too much discretion to determine how training will be provided. The independence and professionalism in the training academy should be carried over to training at ROs.

To improve the quality of supervision and ensure that new employees receive adequate guidance, supervisors should also be required to pass the skills certification test. The VSR skills certification test remains the only avenue for GS-10 VSRs to rise to a GS-11.

The last test was offered over 2 years ago and had a passage of only 42 percent. VBA needs to improve the quality of training provided to employees to prepare for the test.

In addition, employees need better explanations of missed questions so they can master all required subjects.

Several years ago, VBA initiated a reclassification study to update a decades-old VSR job series. It dropped the study without explanation. Meanwhile, VBA continues to lose VSRs to Social Security and other agencies with higher career ladders.

Education loan assistance should also be offered on a much larger scale to recruit and retain good employees.

The recent labor-management agreement on a Flexiplace Program will also be a valuable tool for retention.

AFGE has received a number of troubling reports that new hires are being terminated during their probationary period because they cannot meet production quotas. This is wasteful and counterproductive. It is time for VBA to acknowledge that VSRs need several years of quality on-the-job training to begin producing cases effectively.

We strongly agree with the Committee's majority views and estimates that VBA needs to significantly enhance its workload forecasting ability. VBA has still not done a scientific time and motion study. If VBA is to prepare for the steady increase of claims that are going to be filed as a result of two wars and aging veterans, it must follow the example of other public and private benefit programs and adopt a scientific approach to assessing future staffing needs.

Thank you, Mr. Chairman. I will be glad to answer any questions.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF J. DAVID COX, R.N., NATIONAL SECRETARY-TREASURER,  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

The American Federation of Government Employees, AFL-CIO (AFGE) thanks you for the opportunity to testify today on behalf of the nearly 160,000 AFGE members working at the Department of Veterans Affairs (VA) regarding the Veterans Benefits Administration (VBA) claims processing system.

AFGE is the sole employee representative of Veterans Service Representatives (VSRs), Rating Specialists (RVSRs), Decision Review Officers (DROs) and other VBA employees. As many of our members who work at VBA are veterans, including service-connected veterans, they also bring the "customer" perspective to the job.

*The VBA Backlog: A Barrier to Benefits, Health Care and Employment*

The enormous VBA claims backlog hurts veterans on several levels. Processing delays deprive disabled veterans of a means of support, as well as access to VA health care (with the exception of new OEF/OIF veterans). The backlog delays veterans' ability to get the rating required to apply for Federal employment as preference eligibles. Veterans recently hired by VBA and taxpayers both lose when new hires are terminated during their probationary period because they are expected to "make the numbers" before receiving adequate on-the-job training.

*The IBM Study: Flawed Methodology, Overlooked Problems*

AFGE concurs with a number of the broad recommendations of the IBM study, such as moving toward a paperless environment, completing the phase-in of VETSNET,<sup>1</sup> improving the VCAA letter and moving to issues-based performance measurement. In fact, some of these changes are already underway.

However, it is hard to take seriously a study of the claims process that interviewed 583 management employees and *zero* front-line employees who are "on the

<sup>1</sup> VBA has still not addressed the problem of a redundancy in the process of inputting information that requires employees to have multiple applications open at the same time and enter duplicative information because these programs do not "talk to one another." It would be more efficient if the system automatically made the updates when employees enter new veteran information.

floor” actually doing the work. Every position listed in IBM’s survey methodology was a management position. Our members confirm that IBM only interviewed management during its site visits.

AFGE appreciates IBM’s recommendations for greater labor-management communication, better staff morale and more effective use of the TPSS training tool.

However, the study’s one-sided database contributed to overly optimistic assumptions and findings that understate serious problems that are contributing to the backlog, for example:

- *Finding:* Staffing in the Pre-determination Unit is above satisfactory. *Comment:* VSRs are under intense pressure to meet unrealistic production quotas and are encouraged by management to develop only some issues in the case.

- *Finding:* On-the-job training is highly effective. *Comment:* New hires are frequently deprived of critical hands-on training by production-quota driven managers who want them to cut short their rotations to continue processing cases in their current station.

- *Finding:* The level of staff experience in the Pre-Determination team is less than satisfactory. *Comment:* If front-line employees were surveyed, they would report that trainers, supervisors and mentors often lack the experience, subject matter expertise and training skills to fulfill their roles.

- *Finding:* VBA’s three-tiered monetary award system provides incentives for good performance. *Comment:* The study completely overlooks recent disclosures that both the size and number of VBA bonuses are heavily skewed toward management.

- *Finding:* VBA has effectively implemented the recommendations of the CPI Task Force. *Comments:* At the RO level, numerous CPI recommendations have been ignored or poorly implemented. For example, smaller offices often lack the staff to establish all six CPI model teams. Second, RO accountability is still severely lacking: Managers continue to manipulate data and hide older cases despite revised performance standards, station work performance reports and the ASPEN tracking system.

#### REDUCING THE BACKLOG THROUGH IMPROVED TRAINING

One fact that we can all agree on is that the claims backlog is soaring and there is no relief in sight. IBM reported that over the past 4 years, pending VBA claims increased by 54 percent while the number of cases with eight or more disability claims increased by 88 percent.

There is no magic bullet for reducing the backlog in the face of two wars, an aging veteran population and new benefits and laws. Adequately compensating a growing disabled veteran population requires a growing workforce that is adequately trained. IT improvements are long overdue and will increase the efficiency and quality of the claims process. However, these IT tools must be used by a skilled workforce that has enough time to process claims fully and accurately.

In the short term, the challenge is to effectively utilize the 1,800 new hires that Congress funded in fiscal year 2008 and the significant number of new hires expected for the current fiscal year. AFGE greatly appreciates the recognition by Chairman Akaka and other Committee members in their fiscal year 2009 Majority Views and Estimates that an “intensive training effort” is required to enable additional staff to reduce the backlog. New employee training at the Academy is well regarded, but RO-level on-the-job training for new hires and mandatory 80-hour annual training programs for ongoing employees are severely lacking in quality and consistency.

GAO’s May 2008 findings regarding lack of accountability and the lack of evaluation of training particularly at the RO level are valuable guides for further action, and closely align with the concerns our members report from the field. We also note that, unlike IBM, GAO interviewed front-line employees and included their insights and concerns in its report. AFGE’s only concern with the GAO study is that one could misconstrue its finding that there are no consequences for individual staff who fail to complete their training. By far, the primary reason that employee training is incomplete is constant demands by management to stay in production mode, even when it directly violates mandatory training requirements. On any given workday, a visitor to an RO will see employees using their breaks and lunch hours to study, and take home training materials to review after work hours.

*Train the Trainers:* The first component of an effective training program is good trainers. To ensure that training is of high quality, VBA should develop a cadre of effective, competent trainers with formalized training skills and adequate subject matter expertise who operate independently of RO Directors. The CPI recommendation that each RO have its own full-time training coordinator assisted by VBA Central Office has not been widely implemented. Rather, RO directors assign staff with-

out any particular training skills to be part of the training team. The typical trainer is a mid-level or senior VSR who has not had formalized instruction on training and is too closely aligned with management and its focus on production goals. The result is great variation in the quality and thoroughness of training across ROs.

*Use experienced supervisors and mentors:* Managers who supervise and mentor new employees often lack adequate experience and subject matter expertise. They should be required to pass the same skills certification tests as front-line employees. AFGE urges the Committee to consider the proposal in H.R. 5892, the Veterans Disability Benefits Claims Modernization Act of 2008 to require that managers pass certification exams also.

*Nationally uniform training curriculum:* AFGE is pleased with VBA's efforts to develop new training tools and centralized training programs, but much more needs to be done to ensure that quality and consistent training is provided to every VSR and Rating Specialist. VBA training operates much more like national guidance than a national training plan, resulting in tremendous variations in quality between ROs. There is currently too much discretion at the RO level to determine how training is provided and how to ensure that pressured managers do not cut training short to keep employees in production mode. (IBM survey respondents acknowledged that they find it "disruptive" to rotate new hires to different teams even though it greatly benefits employees' professional development.)

*Formalized, Independent Oversight:* AFGE urges the Committee to increase oversight of VBA training, especially during this critical period of workforce expansion so that new hires develop critical skills and ongoing employees stay abreast of best practices and new benefit rules. Sadly, VBA no longer uses one of the most effective oversight tools available: active collaboration with employee representatives. For example, in recent years, AFGE has been consistently left out of groups addressing training, skills certification and performance standards. An independent, stakeholder training advisory committee that includes employee representatives and veterans' organizations could help VBA develop a national training plan with clearly defined curriculum, identify and disseminate best practices from local facilities, and regularly assess the quality and thoroughness of training programs. The oversight process should also allow require regular reports to Congress.

*Strengthen and standardize the 80-hour mandatory training program for ongoing employees:* There are a number of factors that deprive ongoing employees of adequate training. First, RO Directors often count subjects that are not "core subjects" for example, courses on ethics and sexual harassment, toward the 80-hour requirement. Second, ROs have too much discretion over whether training is delivered through the classroom, TPSS, self-study, etc. Training modules assign credit hours but there is no oversight of how well a particular training mode worked, or whether employees had the time to fully learn the material.

*Regular staff meetings—a simple yet valuable training tool:* Managers should also return to the practice widely used during VBA's "case management era" that preceded CPI of setting aside time for weekly staff meetings. These enable employees to learn about challenging and unique cases, and share best practices. This practice is clearly another casualty of the current production-driven environment.

*Improve VSR Skills Certification Training:* Pursuant to an agreement between VBA and AFGE, qualified GS-10 VSRs who pass a skills certification test can receive a noncompetitive promotion to a GS-11. The test preparation training program has a number of problems. First, contrary to assurances from VBA and the terms of our agreement, the training is not always sufficiently aligned with the scope of the exam, and trainers are often confused about what training materials are relevant to the test. Second, there is significant variation in the amount of time employees have to train for the test. Finally, although the test is "open book," it tests for a tremendously high level of expertise. When employees get a wrong answer, they are directed to complex user manuals rather than receive additional training to help them better understand the training syllabus.

More generally, VBA no longer solicits input of employees and their representatives on matters relating to skills certification testing and training. More collaboration will improve the reliability of this test, which still suffers from low passage rates (25 percent and 29 percent for the first two validity tests and 42 percent for the May 2006 test).

#### REDUCING THE BACKLOG THROUGH EFFECTIVE STAFFING AND PERFORMANCE MEASURES

##### *Workload Forecasting*

This Committee has recognized VBA's longstanding tendency to underestimate its staffing needs and the lack of tools to make accurate forecasts. A scientific workload forecasting study, such as a time-motion study of the time and skill sets needed to

process different types of claims at each stage, is long overdue. Production standards and staffing should be based on scientific methodology, not politics.

AFGE is aware of only of one meager attempt by VBA to collect this data through use of a software program for a small sample of employees. VBA provided no explanation of how they selected the sample or how they selected participating ROs. Data was collected by a program appearing on the screen every few hours to ask what the employee was doing. The program did not differentiate between employees working on a single claim and multiple claims. Front-line employees and veterans' groups had no input into the study.

#### REDUCING THE BACKLOG THROUGH IMPROVED PERFORMANCE MEASURES

Pursuant to an agreement between VBA and AFGE, national performance standards to boost VSR productivity were put in place in 1997 and revised in 2005. For the first time, these standards set a national floor and gave ROs the discretion to set them higher.

Currently, these production standards appear to be based more on politics and bonuses rather than the work required to process a C&P caseload that consists of more and more complex, multiple issue claims. VBA managers, many of whom have not adjudicated a claim for many years (or never), define performance solely in terms of inventory and days pending completion of a decision.

The current work credit system has created a tremendously stressful, demoralizing, assembly-line work environment that is hurting VBA retention of experienced employees and contributing to attrition among new hires. Some members report that when they meet RO production goals, they are "rewarded" by arbitrarily higher goals for the following year. As already noted, the current performance measurement system also takes a heavy toll on training.

AFGE urges the Committee to consider the proposal in H.R. 5892 to mandate a study of the work credit system that focuses on quality and accuracy as well as production. IBM's recommendation to move toward issue-based performance measures is a small step in the right direction; VBA's current practice of assigning more credit for work on cases of eight or more claims should be further refined.

#### REDUCING THE BACKLOG THROUGH MORE EFFECTIVE RECRUITMENT AND RETENTION

As VBA skills are learned entirely on the job, new employees are only able to begin processing cases effectively after roughly 2 years on the job. In these challenging times, VBA cannot afford to lose the unique skills and experience of its senior claims processing staff. AFGE has several recommendations in this regard.

First, as already discussed, production quality and workplace morale will be greatly enhanced if management returns to the collaborative environment of past years, where employee insights were valued and encouraged on key aspects of VBA operations, including training, certification, IT and CPI.

Next, VBA can take several steps to make the VSR career ladder more competitive. VBA regularly loses VSRs to Social Security and other agencies with higher promotion tracks. Despite the extremely complex medical and legal analysis required by this job, VSRs can only rise to a GS-10 unless they pass the Skills Certification test. VBA started a VSR reclassification study some years ago but dropped it without explanation.

VBA should take lessons from the Veterans Health Administration and offer more educational loan assistance to recruit and retain its employees. Our members report that VBA promises these benefits to recruit new college graduates who are later told there is no money to back up that promise. Greater funding and oversight of VBA's use of this benefit is needed.

Another retention tool that was suggested by the CPI Task Force was to offer experienced VSRs a "super senior" position that offers a promotion to a GS-12. This tool has been woefully underutilized.

#### CONCLUSION

We look forward to working with Chairman Akaka, Ranking Member Burr, and Members of the Committee to identifying approaches to reducing the backlog and improving the claims process and ensuring that VBA considers regular input from employees and their representatives and the veterans' community. Thank you.

Chairman AKAKA. Thank you very much, Mr. Cox.  
Mr. Pierce.

**STATEMENT OF HOWARD PIERCE, CHIEF EXECUTIVE  
OFFICER, PKC CORPORATION**

Mr. PIERCE. Mr. Chairman, I think I will submit my written testimony so as to save some time, give you a quick overview of why I am here, and show you something.

Chairman AKAKA. Thank you.

Mr. PIERCE. I am the CEO for PKC and for 20 years we have been building what we call "decision support systems." In the parlance that is being used here, that would be a business rules engine.

What we do is, we take and analyze the different sections rules that have to be applied to make decisions. We try to de-construct them and put them into some algorithms and then we construct a set of questions typically that the user would go through or often multiple users would have different parts of the information set. They would be prompted to be sure, by the software, that the right data gets put in, then the rules set runs, and recommendations and guidance as to how to proceed are given.

We work principally in the medical world for clinical decision reports. But, the last 10 years we have worked closely with the Department of Defense, building tools for them that are used when a servicemember joins the military—to get a base line on them, and then to capture different moments in time during their career, as DOD starts to build their electronic medical record, ALTA. Our system is embedded in ALTA.

About 7 years ago a representative from the VBA came to our company and asked whether our system could be useful in helping out with some of the problems that are being discussed here today. We said, well, we would be happy to take a look. That is what we do. Why do you not send us your rules? And a Federal Express truck showed up sometime later with a book so big that it had handles on it in order to be able to carry it. That was the schedule at the time.

Our folks, after our initial shock, took a look at those rules and said to me, we need to go out and talk to the people that apply these rules. We have got to talk to the raters so we understand what kind of workarounds, what kind of special protocols and best practices they have developed.

Our folks went out and talked to a few of those and then it was agreed with the VBA that we would create a demonstration, a little tiny demonstration, a piece of software that would test out whether it was possible to do this in their world. And that is what I am going to show you here in a minute.

I will emphasize that, in order to do that demonstration in a reasonable period of time, we had to take a tiny segment of what raters have to deal with, and have to have in their head, and have to be able to know how to access in this rule set.

We asked the VBA what section they would like, hoping that they would pick something nice and simple like orthopedics or that kind of thing. And, of course, they picked PTSD, which is—both from a clinical point of view as well as a rating point of view—one of the greatest challenges.

So, I am going to quickly show you what we built for them 7 years ago. This is a very crude representation of what we do now,

but I, hopefully, will make the point that a lot of the paperless discussion that is going on has merit. Other industries have taken this stuff down this way, but I want to emphasize that what a rater is asked to do on a day-to-day basis is extraordinarily complicated.

We live in a world of complexity in my company. We work with a very challenging science. We have never seen anything more complex, actually, because it has both legal, psychosocial, clinical, and more importantly, administrative law that has to be woven together. It is doable; but it is very very complicated. So, I am going to show you just a tiny little bit of that now, if that is OK. Hopefully all the systems work here.

I am going to show to two cases quickly. We were asked, again, to do a work-up on PTSD. So, we set up our system; as I said, we asked a bunch of questions to make sure we get the data into the system. So, the type of questions that are asked here are very fundamental to start with and in a future world, DOD can feed this data cross-electronically because the same system is used to capture this data in their world.

The rater, or whomever is using this system, and I will emphasize in response to, I think, a comment that Senator Murray made—this system is designed to be used collaboratively by different people, the rater or the vet themselves could start this very easily. The VSO could help them with it. The rater can then put information in. The system could even be projected out to a doctor who has to make medical determinations to get a diagnosis in, and that is what I am going to show you here.

So, you just click on the things that are true about the person, filling in the various different boxes, et cetera. This is all very boring stuff, but these are data points that were needed to be captured by dint of the rules as they existed 7 years ago. And when you are done with getting in the basics, you start figuring out what it is that you are trying to rate here.

There are 13 body systems that are covered in that schedule. The one we are talking about here is down in mental disorders; and within the mental disorders world, we are talking about an anxiety disorder and in that we are talking about PTSD. That gives you some sense of what a tiny little slice you are looking at here and how complex the system is.

I am not going to spend a lot of time on the data capture side of it because it is pretty boring. But it is important to note that because there are so many points that have to be captured, having a system that can intelligently prompt the users: what do you mean here; what do you have to get there; what are you missing there; how do you get this stuff in; where do you go look for it. It is very very useful.

This system walks through what is the stressor evidence you have right now: what medical evidence do we have for diagnosis so far; what evidence do we have for a nexus; and what relevant dates we have.

When you are done running through the thing—and that would take a little bit of time for me to show you, so I am not going to bother—you have got a set of data now being represented to you as text on the screen. But, this is coded data that can go into a

database so that you can not only understand this servicemember, but you can also do population studies and learn a lot more about what is causing you your problems and your bottlenecks.

So far, this is meant to represent the initial work-up, the guy who just started the claim. We know this is a 42-year-old male who is having employment problems. He is an Army veteran. He has got a combat infantryman's badge. He has got an original claim for PTSD, but all the stressor evidence is pending verification. So far, we have got a little testimony from his wife and his personal diaries. We know currently that the exam has been done—such as it is for PTSD—does not conform either to the DSM-IV, which is the way the psychiatric world categorizes things, nor is it sufficient for the VBA; and we do not have a diagnosis yet. We have a sort of hodgepodge of evidence that has been stuck in here because of details that the servicemember suggested right away.

So, the next thing our system does—after capturing the data in an organized fashion so that you know what you have got and what you do not have—is it pushes that against that rule set that we are talking about and puts out some guidance for the rater at this point.

And all it tells him right now is (a) we need more information. You have got to go out and make sure somebody does a decent exam here because what you have right now is not sufficient for a diagnosis. And here is the section out of the schedule that is the relevant rule that dictates that. This is the law that has been passed that says you have to do that. And if you want to go directly to see the actual law itself, you click here and then right there. I am not attached to the internet right, but that would take you right into the schedule, right to the page where it has the relevant legal and medical details as to what has to be done at this point.

So, all we are saying at this point is, we are prompting the rater in a way that will hopefully be efficient. What do you have to do next? We also know that we have not got service connection right now. If this case were closed or adjudicated right now, you would have to deny. Why? Because you haven't got a diagnosis of PTSD. And here again, if you are constructing a letter to send out about what to do or sending an e-mail, here is all the text that you need to do that.

So that is all there is so far at that point.

Now, let us jump in time a little bit and assume that this rater has now collected a lot of that information. Let us assume, potentially, that he has either sent out a questionnaire or actually we could e-mail this right to the doctor so they can fill out their part and send it back for diagnosis. Let us hypothesize that that has been done. That is what I have just pulled up here as a new case, or an extension of the original case.

So, now we know a whole bunch about the stressor. We know that this guy actually had an IED explode under his Humvee. There was one killed, two wounded—a pretty clear stressor there.

We know that we have got a lot of verification of that both from further testimony of the wife as well as testimony from an Army buddy. We have got his personal diary. We have got his records from ALTA—because those records are increasingly digitized. They

are sendable and they were actually produced oftentimes by our software.

So, now we have also got a current diagnosis of PTSD because we have had a legitimate provider, a medical provider. To your point, it could have been all kinds of providers that have the ability to do this exam, because the exam is all stated right in here. All the points have to be captured. We have got a complete diagnosis of PTSD.

So, now the guidance extends to (a) you have got your diagnosis. If you want to see the legitimacy of it, there are the 15 DSM criteria that have been met. There are the ones that have not been set positive, but here are the rules of how you calculate PTSD. We were told when we built this to not do the calculation. They said, we want the rater to have further ability to sort of make a judgment themselves.

Obviously, our software could have done the rule calculation for the DSM diagnosis all the way.

Furthermore, what are we going to do about this? So, here are the options that are offered by the rules to the rater at that point.

The first thing is, the law says you must review, in a mental disability case, you must review these particular findings before you make your final adjudication. That is written in the law and has nothing to do with medicine. It has to do with the way you want these raters to be sure they are serving the best needs of our veterans. So, it is just prompted for them right there.

Then the rater is offered the five different approaches he could take to this rating. You can go anywhere from total disability, 10 percent, 30, 50 or 70. Within each of these, you have the criteria that would suggest why that is. The rater then makes their decision.

In this particular case, he has flagged the fact that he has made a total disability decision and flagged the fact that he has, in fact, reviewed this mental disorder stuff and so that then goes into a database and the process proceeds.

So, hopefully, in a short period of time, I have just given you a taste of the fact that systems are out there like this that can be used. It is a horrendous job the raters have. They do a noble job of trying to do it. They are being asked to do what is physically impossible—in our estimation—in a quality-assured way, and tools need to be produced and they need to be at the heart of this bigger process of all of the bureaucracy that has to be tailored to work better. This kind of thing needs to be at the heart of it.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Pierce follows:]

PREPARED STATEMENT OF HOWARD PIERCE, CHIEF EXECUTIVE OFFICER,  
PKC CORPORATION

Chairman Akaka, and Members of the Committee, I would like to thank you for inviting me to testify today on the important subject of ways to improve the VA's disability ratings process.

My name is Howard Pierce and I am the Chief Executive Officer of a software company called PKC.

PKC has worked exclusively in the field of medical decision support for almost twenty years. We have optimized our tools to illuminate and support the inherently grey and multi-faceted decisions required for clinical problem solving. Our 70 employees work in a remodeled woolen mill by the banks of the Winooski River in Bur-

lington, Vermont. Day in and day out, for the last 20 years, they read medical literature and figure out how to separate medical facts from opinion and then how to construct sophisticated questionnaires to expose those facts. Our system is a proven technology, which has been licensed by the Department of Defense for almost a decade. In fact, our tools produce some of the baseline and deployment-related data on servicemembers that is eventually used by VBA raters. When approached by the VBA some time ago, we delivered a proof-of-concept implementation of the Post Traumatic Stress Disorder benefits rating rule set. This particular problem (PTSD) was selected by the VBA for its complexity, cost, and difficulty to rate, and I will show it to you briefly today.

The issues that confront the Veteran's Benefits Administration are complex and difficult, as recent studies and commissions have reported. Reengineering the claims process cuts across clinical, legal, bureaucratic, political, and social domains. Furthermore, refitting the VBA ship must be accomplished as the ship is sailing full speed during a time of war, when the needs of many new veterans are at their greatest.

Nevertheless, my company believes that there is a core component within the larger set of issues facing the VBA which must be reinvented regardless of whatever form the broader disability rating process reorganization takes.

The VA Schedule of Rating Disability is the core rule set that governs all of the decisions that are rendered by raters to our Nation's veterans. It is a massive tome that represents 60 years of evolved public policy combining medicine, law, and regulation. It is the essence of what the VBA is expected to provide, on a consistent basis, to any of our veterans who claim disability. The Schedule provides the rater with the means to determine 1) if a medical problem is ratable 2) if the problem was incurred during or as a result of military service, and 3) to what degree the problem should be compensable by the government.

Yet as we approach the end of the first decade of the 21st century, the only way to access the rules in the Schedule is by doing it the same way one would have in the 16th century; by reading the rules in a book. But this is no ordinary book. It is a massive conglomeration of rules that is thousands of pages long, so big that it handles on it, covering the 13 body systems of the most complex machine ever, the human body, along with 60 years of evolved policy of how to proceed when that body is damaged in the service of the Nation.

Like the practice of medicine itself, the Schedule is so complicated that no human being can be expected to accurately negotiate its byzantine, sometimes conflicted, and ever changing rules in a timely and consistent manner.

Instead, the VBA should focus on automating the Schedule so that the raters can make sure that every veteran gets the same comprehensive, standardized problem workups and evidence review processes. When a veteran applies for compensation, a second year rater from the Baltimore regional office should be able to do as well as rater with 25 years' experience from the Portland office.

Properly designed computer software can provide that standardized consistency, while still retaining the flexibility so that raters can make the final decisions.

An automated VA Schedule would incorporate the following characteristics:

- It would be released from its current text-based format
- It would be inspected carefully for currency, accuracy, and conflicts
- It would incorporate the critical "best practices" that have been evolved by the VBA's most talented raters
- It would be restated as concepts, references, rules, and guidance options in a world-class decision support system
- It would be updated regularly to ensure changes in the rules are quickly and efficiently implemented

In addition, this new decision support system must assure the following process improvements:

- The individual veteran case-profiles it produces must be in a computable form and granular enough so the VBA can continuously study its database of cases looking for new lessons, anomalies, and evolving veteran disability profiles. This will allow both faster reaction to new and emerging realities and needs, as well as improved population level reporting to Congress and other stakeholders.
- The system must be far easier to learn and use than the current approach. It must assure faster training of raters, better quality assurance and less variation, and improved retention of experienced raters as the result of better job satisfaction.
- The system must be fundamentally designed to evolve and improve, with little or no impact on the daily workflow of the Raters.

- The system must be configured in such a way that the veterans themselves (and their representatives) can be safely utilized to input required historical data, thereby lightening the load on the rater.
- Every aspect of the decision logic must be available, auditable, and transparent to all parties and at any point in the process. This transparency aspect has the greatest potential to save money and assure fewer non-viable cases and legal appeals.

PKC's demonstration product was well received by every VBA official that reviewed it. However various larger information technology issues intervened and the prospect of building a fully automated version of the VA Schedule never became a reality. It appears that the VBA is again interested in companies like PKC who have the unique ability to manage this sort of non-black and white decision support challenge. Our concern however is that once again the larger process of selecting and managing a systems integrator will further delay the fundamental work effort necessary to begin to get to the hard job of automating the VA Schedule.

The task ahead is not easy, but it is imminently achievable. We at PKC would assert that the core effort of analyzing the VBA's disability rating business rules and their re-implementation within a state-of-the-art decision support system should begin immediately as this will be the rate limiting step in improving the claims process to better serve our veterans and the taxpayers.

Mr. Chairman. Thank you very much, Mr. Pierce.  
Mr. Rollins.

**STATEMENT OF WILLIAM "BO" ROLLINS, DIRECTOR OF FIELD SERVICES, PARALYZED VETERANS OF AMERICA**

Mr. ROLLINS. Chairman Akaka, Ranking Member Burr, and Members of the Committee, on behalf of Paralyzed Veterans of America, I would like to thank you for the opportunity to testify today on improvements that can be made to the Department of Veterans' Affairs claims process.

PVA appreciates the effort being given to updating and modernizing the VA disability system and we recognize the hard work that VA is doing every day to try to make the system better.

We generally agree that the claims process takes far too long for many veterans, but we do not believe simple quick fixes are the solution to overcoming this problem. As such, we would like to make some recommendations that we believe can improve the entire process.

We will also briefly address the recommendations of the IBM Claims Processing Improvement Study referenced in the invitation for this hearing and we appreciate you listening to our views.

PVA believes that two basic benchmarks must be established when assessing changes to the disability claims system. First and foremost, no current benefit or service for today's veterans should be diminished, including the reduction of resources for those benefits or services in the interest of change.

Second, and no less important, there should be no distinction made between combat and non-combat related disabilities or where the disabling event occurred. PVA views all veterans in the same light and we believe that the current system reflects appropriate priorities.

PVA, along with the co-authors of *The Independent Budget*, continue to advocate for adequate funding for general operating expenses and, as noted, we are particularly pleased that Congress has, in fact, increased funding for VBA to increase their staffing.

We have long argued that the only way to give VA a fighting chance to overcome a rapidly growing backlog is to provide for ade-

quate staffing. But it is important to note that simply hiring additional staff is not enough, as we have heard earlier today.

Equally important is to ensure proper training and accountability of claims adjudication staff at all levels of the process. While it is easy to blame first front-line claims staff for improper ratings decisions, much of the blame also has to fall with the management within VBA.

Performance measures for all levels of adjudication staff have wrongly focused too much on quantity of claims decided rather than quality.

PVA is also concerned that VBA is not really spending the new funding that Congress has provided in the last couple of years in the manner that Congress intended and that the Veterans' Service Organizations desire.

Specifically, we believe that VA is spending too much of this new funding on pilot projects and special programs than on basic hiring and systemic needs.

Recent hearings have demonstrated how far behind the VBA is in using IT technology in the claims process; and while we believe the entire claims process cannot be automated, there are many aspects and steps that certainly can.

We have long complained to the VA that it makes no sense for severely disabled veterans to separately apply for the many ancillary benefits to which they are entitled. Their service-connected rating immediately establishes eligibility for such benefits as: the specially adapted housing grant; automobile adaptive equipment; and education benefits. However, they still have to file a separate application form to receive these benefits. There has to be a separate decision made to establish their entitlement to what they are entitled by law.

Furthermore, certain specific disabilities require an automatic rating under the Disability Ratings Schedule. For example, it does not take a great deal of time and effort to adjudicate a below knee single-leg amputation. An advanced information technology system can determine a benefit award for just such an injury quickly. We believe that it is time for the VA to automate consideration of ancillary benefits and specific ratings disabilities that are generally automatic.

With this thought in mind, we also believe that it is essential that VBA expeditiously adjudicate claims that can be adjudicated quickly. By tying into an advanced IT system, VA could identify and decide claims that can be granted quickly. We have observed through our national service officers in the field that oftentimes VA continues to develop evidence in cases where the evidence already developed supports the grant of the benefit.

We also believe that VA should use experienced adjudicators to decide initial claims and to prepare VCAA notice letters rather than using its most inexperienced staff for the initial review. VA should employ more experienced adjudication personnel to review claims to determine what information or evidence they need to support their claim.

After identifying it, they need to prepare the letter and send it to the veteran. They should, and as they do, require and expect the

VSOs to help them in that effort, and I expect my service officers to develop every client.

We also believe that VA should not be reluctant to issue regulations overruling court opinions that have required the VA to provide unnecessary information in VCAA notice letters. VA often complains that much of the delays that it experiences in developing and adjudicating cases result from court opinions interpreting the letter. Congress should consider amending the law to direct VA to fill in the contours of an adequate VCAA notice letter.

Also in the interest of time, I can echo the comments Mr. Baker from DAV made regarding the view of private physician evidence and private medical opinions.

Having said that, I am running out of time. I thank you very much and I am available for questions.

[The prepared statement of Mr. Rollins follows:]

PREPARED STATEMENT OF WILLIAM "BO" ROLLINS, DIRECTOR OF FIELD SERVICES,  
PARALYZED VETERANS OF AMERICA

Chairman Akaka, Ranking Member Burr, and Members of the Committee, On behalf of Paralyzed Veterans of America (PVA) I would like to thank you for the opportunity to testify today on improvements that can be made to the Department of Veterans Affairs (VA) claims process. PVA appreciates the effort being given to updating and modernizing the VA disability system. In fact, we have been very involved with a number of the Commissions that have been charged over the last couple of years—particularly the Veterans' Disability Benefits Commission and the Dole-Shalala Commission—with developing real solutions to the problems facing the Veterans Benefits Administration. We recognize that the claims processing system is in need of change. However, we believe that the current system is a fundamentally good system.

While we generally agree that the claims process takes far too long for many veterans, we do not believe simple quick fixes are the solution to overcoming this problem. As such, we would like to make some recommendations that we believe can improve the entire claims process. We will also briefly address the recommendations of the IBM *Claims Processing Improvement Study* referenced in the invitation for this hearing. We certainly appreciate the Committee soliciting our views on how to improve a system that so many veterans rely on.

PVA believes that two basic benchmarks must be established when assessing changes to the disability claims system. First and foremost, no current benefit or service for today's veterans should be diminished, including the reduction of resources for those benefits or services, in the interest of change. Second, and no less important, there should be no distinction made between combat and non-combat related disabilities or where the disabling event occurred. PVA views all veterans in the same light and we believe that the current system reflects appropriate priorities.

As Congress and the VA consider implementing changes to the claims process to decrease delays, it is essential that they acknowledge that a certain amount of delay is inherent in the VA adjudication system. The Veterans Benefits Administration (VBA) administers a massive program that handles nearly a million new claims each year. Moreover, these claims are often very complicated, requiring difficult decisions based on detailed evaluations of medical, legal, and vocational issues. Furthermore, the VBA is a complex organization involving multiple steps at the VA regional offices and at the Board of Veterans' Appeals (Board). And this does not take into account the Court level above the Board. With these thoughts in mind, this should not be interpreted as an excuse for unnecessary delays nor does it mean that real, meaningful improvements cannot be made. In the end, it is important to remember that the claims system is charged with meeting the financial, medical, and vocational needs of the men and women who have served this country honorably, often at great physical and emotional expense.

Paralyzed Veterans of America, along with the co-authors of *The Independent Budget*, continue to advocate for adequate funding for General Operating Expenses (GOE) in the VA budget, specifically for the VBA. We are particularly pleased with the fact that Congress has appropriated significant increases in funding for VBA over the last couple of years. Likewise, we appreciate the emphasis placed on hiring many new claims adjudication personnel. We have long argued that the only way

to give the VA a fighting chance at overcoming the rapidly growing claims backlog is to provide for adequate staffing.

However, it is important to note that simply hiring additional staff is not enough. Equally important is to ensure proper training and accountability of claims adjudication staff at all levels of the process. While it is easy to blame first-line claims staff for improper ratings decisions, much of the blame also has to fall to the management within VBA. Performance measures for all levels of adjudication staff have wrongly focused too much on quantity of claims decided rather than quality.

PVA is also concerned that VBA is not really spending the new funding Congress has provided in the last couple of years in the manner that Congress intended and the veterans service organizations (VSO) desired. Specifically, we believe that VA is spending too much of this new funding on pilot projects and special programs rather than on basic hiring and systemic needs.

We believe that VBA must accelerate the progress toward an electronic claims record system. As long as VA continues to use a paper file shipped around the country, the claims and appeals process will be done in an expensive and antiquated manner. Under the current system, VA staff need the actual claims file to act on claims. In a paperless environment VA staff could act on claims without having to access a claimant's actual claims file. Additionally, transition to a paperless system will permit claims work to be seamlessly transferred to any of VA's regional offices, allowing for quicker decisionmaking on claims. As demonstrated by the Veterans Health Administration's outstanding electronic medical record system, similar gains in access to records can be realized in the claims and appeals process, as well as significant cost savings as VBA and the BVA move toward a "Virtual VA." We urge Congress to accelerate funding of VA's transition to an electronic claims record.

Recent hearings have demonstrated how far behind the VBA is in using information technology in its claims adjudication process. While we believe that the entire claims process cannot be automated, there are many aspects and steps that certainly can. We have long complained to the VA that it makes no sense for severely disabled veterans to separately apply for the many ancillary benefits to which they are entitled. Their service-connected rating immediately establishes eligibility for such benefits as the Specially Adapted Housing grant, adaptive automobile equipment, and education benefits. However, they still must file separate application forms to receive these benefits. That makes no sense whatsoever.

Furthermore, certain specific disabilities require an automatic rating under the disability ratings schedule. For example, it does not take a great deal of time and effort to adjudicate a below knee single-leg amputation. An advanced information technology system can determine a benefit award for just such an injury quickly. We believe that it is time for the VA to automate consideration of ancillary benefits and specific ratings disabilities that are generally automatic.

With this thought in mind, we believe that it is essential that VBA expeditiously adjudicate claims that can be adjudicated quickly. By tying into an advanced information technology system, the VA could identify and decide claims that can be granted quickly. We have observed through our national service officers in the field that oftentimes the VA continues to develop evidence in cases where the evidence already developed supports the grant of claimed benefits.

PVA also believes that centralized training better prepares ratings specialists at all levels. Training of rating specialists was historically conducted at the local level by the more senior staff. The VA now provides centralized training at its Veterans Benefits Academy located in Baltimore, Maryland and via the VA intranet. The Compensation and Pension Service also issues Decision Assessment Documents (DAD) in response to Court precedent opinions to inform staff of these decisions. The VA should be lauded for these actions. Furthermore, as we have called for in *The Independent Budget*, co-authored by PVA, AMVETS, Disabled American Veterans, and the Veterans of Foreign Wars, Congress should fully fund VA's training initiatives. Improved and continued centralized training should help reduce inconsistencies and disparities between Regional Offices and should improve consumer confidence.

Meanwhile, we believe the VBA should use experienced adjudicators to decide initial claims and to prepare Veterans Claims Assistance Act (VCAA) notice letters. Rather than using its most inexperienced adjudication staff to perform initial review of claims, VA should employ more experienced adjudication personnel to review claims to determine what information or evidence each claimant should submit to VA in order to support their claims. After identifying the evidence or information that is needed to substantiate each claim these more experienced VA adjudication personnel should then have the responsibility to prepare and send VCAA notice letters to each claimant advising each claimant of the evidence or information they need to submit to VA in order to substantiate their claims.

It also is important to realize that decisions made on appeal require greater expertise and often involve more complex questions of medicine and law. As such, it takes years to train a competent ratings specialist. Trainees and other adjudications staff with little claims rating experience should simply not be conducting appellate review due to the complexity of these decisions. Increases in staffing today should be seen as an investment in the future. Unfortunately, in the end, staffing issues do not have a quick fix.

With regards to the VCAA notice letters, we believe that there is much room for improvement in their quality and readability. The only individuals impacted by what we deem to be substandard VCAA notice letters are veterans. Current VCAA notice letters issued by the VA tend to be long and contain complicated legal language that most average veterans cannot comprehend. By simplifying VCAA notice letters, claimants will have less confusion and will have a better understanding of the information and evidence that the VA needs to grant their claims.

We also believe that VA should not be reluctant to issue regulations overruling court opinions that have required the VA to provide unnecessary information in VCAA notice letters. VA often complains that much of the delays that it experiences in developing and adjudicating cases result from Court opinions "interpreting" the nature and content of an adequate VCAA notice letter. Congress should consider amending the law to direct VA to fill in the contours of an adequate VCAA notice letter by regulation.

The VA and veterans' service organizations can also explore opportunities to share resources for training. For example, PVA has prepared a Guide for Special Monthly Compensation (SMC) that has been adopted by the VA for use when training ratings specialists. This information has been included on the VA's intranet. The PVA Guide has also been distributed via BVA Special Monthly Compensation training. PVA staff also interacts with other veterans' service organizations at their training events. Moreover, Congress should require the VA to provide greater access for veterans' service organizations to VA's training modules.

We would also like to make a couple of minor recommendations that could prove particularly beneficial to veterans filing claims. First, we believe VA should establish phone banks that allow veterans/claimants to get their questions answered. The VA should establish these phone banks in each regional office around the country. The phone banks should then be staffed by experienced claims adjudicators who would be responsible for calling claimants concerning their claims and offering advice or suggestions to veterans on the evidence or information that they need to submit in order to substantiate the claim. We believe this could go a long way toward improving the customer relations problem that the Veterans Benefits Administration clearly has when it comes to dealing with veterans filing claims.

The VA should also establish a secure internet web portal where claimants can go to get answers to their questions on their claims. By establishing such a portal, if and when the VA transitions to a paperless claims processing system, claimants will have greater access to information. Moreover, it could provide veterans with some degree of transparency as to what the status of their claims is in the process.

We remain concerned that VA does not readily accept medical statements and medical opinions prepared by private physicians. Congress should enact legislation that requires VA to accept a medical report or a medical opinion provided by a private physician unless VA is able to articulate sound reasons for declining to accept the private medical opinion. Experience seems to suggest that VA adjudicators are disinclined to accept private physician statements or medical opinions simply because the statements or medical opinions are prepared by private physicians and not VA doctors. These actions occur regardless of whether the private physicians' findings are sound. By refusing to credit private medical statements or medical opinions, VA unnecessarily delays adjudication in many claims.

The veterans' service organizations play an active role in assisting veterans through their national service officer programs. As such, in recognition of the professionalism and expertise of the service officers who already work very close with VA staff, we believe certain opportunities to assist veterans filing claims should be expanded. First, Congress should authorize accredited veterans' service organization representatives to file any type of claim for the veteran without obtaining the veteran's signature. This will allow veterans to access benefits that they may not know are available in an expeditious manner. The VA should also authorize accredited service officers access to VA computer systems to input important data such as updates to personal information. This would relieve VA staff of some of the minutia that accompanies their own job responsibilities. It will also ensure that otherwise critical information impacting the claim filed by a veteran is updated in a timely manner.

We believe that allowing veterans' service organizations to assist injured service-members who are still on active duty and who are going through the medical evaluation board process would be a beneficial change. These men and women will ultimately turn to the VA for health care and benefits, and veterans' service organizations are one of the best resources in the transition process. Congress should consider changing the statute to allow for a Power-of-Attorney (POA) to be valid before both the Department of Defense and the VA. Moreover, we believe veterans' service organization national service officers should be granted access to active duty service-members preparing for discharge up to 6 months prior to the discharge. This could certainly expedite the transition process as well as the time it takes for the soon-to-be veteran to receive a ratings decision for a disability claim.

PVA staff also reviewed the recommendations included in the *IBM Claims Processing Improvement Study*. We generally support all of the recommendations included in the report. However, there is one recommendation that we do not support in the report. Specifically, the IBM report suggests that evidence to support a claim should be filed within 30 days rather than the current 60 days. PVA has provided written comments in response to proposed VA regulations to establish strict time limits on the time to file evidence. PVA wholeheartedly opposes this suggestion. Claimants are not always in a position to obtain and file evidence quickly, whether as a result of health conditions or other circumstances. Moreover, the recommendation of the IBM report and the proposal by the VA seems to ignore the fact that many of the problems with obtaining evidence in a timely manner are not the fault of the veteran at all. We have often waited months simply trying to get a medical opinion from a doctor to include as evidence for a claim. To require a veteran to submit evidence within 30 days is simply unrealistic.

We would also like to recommend that VA consider contracting with IBM to study the Board of Veterans' Appeals (Board). Given the comprehensive scope of recommendations included in the *Claims Processing Improvement Study*, similar recommendations could certainly benefit the Board. Moreover, we believe that it may be time for Congress to consider decentralizing the operations of the Board of Veterans' Appeals. While we understand why the Board was originally centralized in the Washington, DC area, the benefits of that type of control seem to have passed. The centralized Board has now become a huge bottleneck in the current VA adjudication system causing a rapidly growing case backlog of its own and intolerable delays in administrative appeals. Currently, it takes the Board more than 900 days to decide an administrative appeal. A decentralized Board would likely achieve efficiencies and improve customer satisfaction. At the same time, we realize that decentralization would require the veterans' service organizations to change the way we provide service at this level. But we believe that this is a change worth making.

We also believe Congress should require that members of the Board be Office of Personnel Management (OPM) qualified Administrative Law Judges (ALJ). As ALJs, we believe Board members would be better qualified decisionmakers and have the independence currently lacking in how Board members are selected and managed.

PVA would like to make a simple recommendation as it relates to the Court of Appeals for Veterans Claims (Veterans Court). It is a known fact that the Veterans Court is dealing with a heavy caseload. As such, we would recommend that Congress consider increasing the number of Veterans Court judges. Earlier this year, PVA testified in support of legislation—S. 2091—before this Committee that would address this need. We certainly believe that adding two new judges to the Veterans Court could improve its speed and efficiency. However, if two new judges are added to the Court, it is important to ensure that the terms of the first two are appropriately staggered. We believe that one judge should serve for no more than five or 7 years and the other judge should serve 10 to 12 years. This will ensure that the first two new judges and all subsequent judges will not leave the Court at the same time.

We would also recommend that Congress take more care to encourage the nomination of judges who have some prior experience in Veterans Law. Similarly, Congress could also ensure that the Veterans Court maintain an experienced and skilled central legal staff that would be in a position to assist newly appointed judges. With skilled legal staff and experienced Veterans Law judges, the transition to a nine-member (or expanded) Veterans Court would be eased.

PVA appreciates the efforts of this Committee to address the difficulties facing the Veterans Benefits Administration as it works to overcome the growing claims backlog. While we understand the desire to improve specific benefits for veterans, it is imperative that the systemic problems with the claims process are addressed. We look forward to working with the Committee to develop meaningful reforms to the

claims processing system that do not diminish the benefits provided to the men and women who have served and continue to serve this Nation honorably.

Thank you again for the opportunity to testify. I would be happy to answer any questions that you might have.

Chairman AKAKA. Thank you very much, Mr. Rollins.

Mr. Pierce, I appreciate your testimony concerning the difficulties confronting VA employees who use the VA schedule for rating disabilities.

Given its current complexity, my question is, how difficult and time intensive would it be to automate the schedule; and how would you recommend that this process or the system be undertaken by VA?

Mr. PIERCE. Mr. Chairman, I think that there is a general question out there as to, do you try to automate the system as it exists right now or do you try to review it before you automate it.

I would suggest in order to even understand how you would want to modify the system and make it more efficient and less contradictory, first you have to take it apart and automate it once.

Seven years ago we did something of an analysis as to how long it might take us, our particular company, to take the job down. We estimated that overall it would take about 3 years, and we could do it in components so that the really difficult and urgent ones—particularly the psychiatric things like PTSD, concussion injuries, things like that—could be done first so those could come online early in that 3-year process. It is a very time consuming process.

I do not think there is any company in the world, any company, that could do it very very fast.

Chairman AKAKA. Mr. Cox, I agree with you that there is no magic bullet for reducing the backlog in the face of two wars, an aging veteran population now, benefits and laws, and new benefits and laws. I know that you believe that an intensive training effort is required to enable staff to reduce the backlog.

My question to you is, how can regional offices meet training requirements without sacrificing production?

Mr. COX. If I could answer that totally today, sir, I would probably be the Secretary of the department, because I think that is a very difficult question.

I think up-front you have to make that commitment. You have to allocate that time to the employee, do the proper training and realize that they are not going to be able to produce the same work that someone who has been there 5 or 10 years doing it.

Again, these are on-the-job people—all training happens on-the-job. It is about 2 years before a person is functioning at full capacity to be able to deal with the claims and to do the work.

Again, it is like someone going to nursing school. We would not expect someone the first 6 weeks in a nursing program to be able to function at the same level as the nurse that had 5 or 10 years working in an intensive care unit.

So, I think there has to be the set aside and understanding that it takes a period of time. You hired 3100 employees over the last year, but I do not think you are going to see the full effects of those employees for about another year or a year and one-half to come when they are at full production level.

Chairman AKAKA. Thank you.

Mr. Rollins, your testimony suggested that Congress may want to consider decentralizing the operations of the Board of Veterans' Appeals. Can you explain what the benefits of this reform would be? In your mind would this require additional resources or could it be accomplished with BVA's current staff size and budget allocation?

Mr. ROLLINS. I certainly have not studied it to the depth that I could say with a degree of confidence that they would be able to do that with current staffing and budget. I really do not know.

I do believe the system, as it was designed, is quite antiquated and it has been in place a long time. The VA has a tendency right now to want to consolidate everything. The problem with that is, you get away from local decisions. The appeals staff right now are very highly trained. As you may remember, over the past few years this was a big issue—4, 5 or 6 years ago—with the backlog in appeals. They have staffed up and they are being more productive, but they are getting more appeals. And if the trends continue, that will go up as well.

So, by decentralizing, you may be able to get a decision done locally. Certainly you would have the expertise of the administrative law judges available to the VA staff. The raters and the staff that are working at regional offices today, they do not have a dialog or connection right now. We might be able to avoid an appeal if a rating specialist had the ability to talk to a law judge about a case before it got up to the board even. They might be able to resolve it quickly and locally.

Chairman AKAKA. Thank you very much.

Senator Burr.

Senator BARR. Mr. Pierce, I heard you say, as you made your presentation, that this was developed a number of years ago. Were this to be a project that you developed today, from that experience, what would you do differently as you developed that product?

Mr. PIERCE. A very good question, sir. The main thing that we would do that we did not have the resources nor the time in that demonstration project, what we would do differently is assemble a team of experienced raters to work with us as we did it.

Just as with any complicated world, the rule sets only give you maybe 70 percent of the expertise you need. The best practices developed in the field are critically important and the variation you see between the different ROs has a lot to do with where that expertise lies.

If you can bring it altogether—put that expertise in the tools and, therefore, everybody is benefiting from it—and as new expertise is developed, you put them right back, so you are continuously evolving those tools. That is probably the main thing that I would focus on right away. It was not that we did not know that at the time. It was just that in this project we did not incorporate that level. One lot of interviews with people and then we had to get this done and get it to everybody.

Senator BARR. Within that framework at the time you had to deal with, did you review the software that they currently use to probe through these files?

Mr. PIERCE. Well, at the time, as they were starting to consider building a program—I think it is called RBA-2000—I think one of

the reasons that—after our demo was done and well received by everybody in the VBA—we never heard from anybody again until now was the hope that they would be able to do something similar to this in-house. So, we had no visibility from that day forward into what was going on in the VBA despite a number of inquiries, obviously. This would be a huge project for a small company like mine.

Senator BURR. Well, that is sort of a government impulse. If we can do it outside, we can do it better inside. The current Administration not included.

Mr. PIERCE. It is a natural impulse because they do not want to be trapped by parochial software that some other company has to maintain.

Senator BURR. Let me ask you. You understood very well the complexity of what these raters are asked to go through and the impact frequent court decisions, new laws, and changing regulations might have on their process.

If you created a software package like this, could it be created in a fashion that had the flexibility to incorporate those changes, those nuances, as they, in fact, took place?

Mr. PIERCE. That would be the whole point. The world that we live in mostly is clinical decision support and the science of medicine changes constantly. So our system, and any system like it, is designed so that you have people monitoring those changes continuously and updating the software continuously. So, the software is inherently designed to anticipate constant evolution and new information and new rules being asserted into it while it is being used.

Senator BURR. Let me ask this question for Senator Tester, because I think he would ask it if he was still here. You said that creating this automated system would not be easy, that it would take some time.

Mr. PIERCE. Yes.

Senator BURR. How long?

Mr. PIERCE. Our estimate at the time 7 years ago with one major assumption being made—which was that we had the full cooperation of the VBA and access to some of their best raters—we estimate our company could build this totally in 3 years, and we could build it in components so that they come online during the course of those 3 years, starting with the most complex areas and the most currently active areas. Obviously in the current situation we are in now, that would mean a lot of the psychological components and a lot of the concussive Traumatic Brain Injury, and things like that, and some of the orthopedic stuff.

Senator BURR. Let me turn to the other three if I can. I mean, you have seen the same presentation I have—possibly for the first time—and the use of technology in making these decisions or building in the assumptions, I guess one would say. What is your assessment of it and do you believe that it would provide the degree of accuracy and consistency with what we need in the rating process?

Mr. BAKER. Not myself, but others at DAV have looked at the technology and they like it. What I think I could add to it is that we have looked at manpower and budgetary resources and now this IT stuff. What I try to focus on with my recommendations are

changing core procedures in the VA. Now, that, added to the technology, I think you would have a completely different system.

How you can mend the two together, I do not think it would be that difficult. But some of the recommendations we tried to make here today, if you look at a case that goes all the way through the appeals process, could conceivably take 3 years off of the case and not take away a single right from a veteran. That is the case that would normally get remanded to AMC. It takes 6 months to 7 months off of an appeal just to get to the BVA.

Now, if you can incorporate those types of procedural changes that do not take any rights away from the vet, does not expend any governmental resources—while at the same time automating other parts of the process,—then you are kind of attacking the problem all the way through. Only the IT, I think you are still left with these superfluous procedures that just add to the process, do nothing for the vet, complicate things for the VA and open up interpretations from the court.

So, I would like to see a combination of the two and I think you would have a pretty solid system at that point.

Senator BURR. David.

Mr. COX. I think IT here is just like in health care. It has greatly enhanced the doctors and nurses in the work that they do, but by the same token, it will not totally replace the human element of the individual that that person needs to be involved in that claim, just as the doctor has to be involved in health care.

I think IT is certainly moving along, but there is also the great need to train the employees in the use of the IT; and understand that while they are learning how to use that it will slow down the process while you are actually doing things that will speed up the process.

Senator BURR. Well, I think of something that Bo said. Below the knee amputation is sort of a no-brainer. If you look at it, a claims processor can sort of process that pretty quickly.

Mr. ROLLINS. Yes, sir.

Senator BURR. We do not have a system that sorts out the easy ones and shuffles the tough ones over here. They work through the list.

We assume that an individual processes that faster, not necessarily looking at the numbers, believing that that assumption is the right one. With this package, it would happen because it would kick that out in a process very early on because the likelihood is the majority of the information was there. It is almost like a third-party review and we know the easier the conclusions are, third-party review takes a tremendous pressure off of those individuals who do the tough ones.

I will go to you on any comments on this, Bo?

Mr. ROLLINS. Yes, sir. I think certainly the IT idea system is going to help. I do agree with Mr. Cox about we cannot remove the human element no more than we can take a computer and replace a judge and a jury in a courtroom. Evidence has to be weighed and material has to be interpreted, and there is always going to be a brain that is going to have to be involved in the process, but there are a lot of things that are no-brainers, and they are not automated, and they could very easily be.

The other thing is, it is a little ridiculous that a veteran has to go tell the VA he is a male when we figured that out when we examined him when he enlisted in the service. We should capture that data, as you referred to earlier, from the very start. The DOD knows it. There is no reason that that cannot be entered the day I raise my hand and you put me in the system. I am eventually going to be a veteran unless I somehow dishonor myself and am booted out.

When I get my leg blown off a year and one-half later in Iraq and that "op" report gets in there reporting my trauma, that data has already been captured. It is simply a matter of transmitting and getting it to the VA. And anything that happens to me during the entire period of my service can be documented, transmitted over, stored in some giant server somewhere and then blasted to VA once it is time for my claim to be processed. It is not as complex as it might be made to appear in a lot of cases.

Senator BURR. I am thoroughly convinced that we have individuals at the VA today that understand the need to capture that DOD information, that they are doing everything that they can professionally and privately to try to facilitate that at all levels. I think that is the one thing that changed: its that we do have that aggressive attempt to try to glean that information.

Howard.

Mr. PIERCE. Yes. One comment just to echo what these folks have been saying is, that this is a decision support system. It absolutely does not remove the human and one of the main goals for designing this stuff is to improve the job experience of the people who have to make these tough decisions.

We are absolutely convinced that a system like this, properly implemented, will actually help with retention and will certainly help with the job of training people up from new recruits into the system.

If you put the knowledge of how the rules perform into the machine itself, it allows the training to be much more focused on the interpersonal and those subtle skills on how do you go out and ferret this information out, help them in service organizations assemble stuff. That is really what these tools are best at.

Linking all those rules in is great, but I think the most important part is helping—particularly the new rater—get a vision of what has to be done quickly and become effective more quickly.

Senator BURR. Thank you. Thank all of you.

Chairman AKAKA. Thank you. I will start a second round here.

Mr. Baker, you note that over the years the Court of Appeals for Veterans' Claims has demonstrated a propensity to remand and vacate cases rather than reverse errors committed by the Board of Veterans' Appeals.

Please discuss your prescription for addressing this problem and describe the impact it will have on the claims adjudication process as a whole.

Mr. BAKER. The bill in the House right now, H.R. 5892, would amend the court's rules. I believe it is section—I am not going to try to repeat the section. I will misstate it. But it would require the court to address errors raised by the appellant unless the court is going to reverse the decision.

So, if you have a case come up and an attorney or a representative or the appellant himself presents two or three legal arguments, a lot of times what the court will do either at the encouragement of VA counsel or on their own, *sua sponte*. They will take one issue and address it, and they will take the other two and they will not address it. They will vacate that issue and remand it back to the board and indicate in their decision that that can be raised again at the board.

But, you are sending the same thing back to the board that they already looked at with no judicial instruction. And most likely you have made that same argument at the board. The board is going to do the exact same thing and render the exact same opinion.

It is going to come to the court just to do it all over again; and when you have these things pile up by the thousands at the court, you can multiply that numerous times over at the board and numerous times over at the oral levels or the AMC. And if the court would just address it the first time, you would eliminate all of that.

Now, that is going to simply address appellant's error. In some instances it may be favorable and it may be unfavorable. At the same time VA knows that this takes place. There have been a tremendous number of cases settled once we pushed for the court to address something. But when VA is convinced that they are not going to address it, you know, they continue to, I guess, sort of defend to the death and we will not settle the case.

A lot of cases went to oral argument; and as soon as the case goes to oral argument, VA settles the case because they have a feeling that they are going to lose.

If the errors were addressed by the court the first time they were raised, you would eliminate all of that and it would do a tremendous amount of, you know, it would add a lot of efficiency to the system; and it would not expand benefits whatsoever. It would just clean up some procedural messes and I think it would be very positive to the system.

Chairman AKAKA. Thank you.

Mr. Pierce, you suggested it would take 3 years to automate the current rating schedule. What do you estimate the cost of such an effort would be?

Mr. PIERCE. OK. For the record, with several caveats that, again, we would need a great deal of cooperation with this, that, and the other; and that we are just tool builders. We build a tool. The way it is implemented and the other tools with which it is imbedded is not part of my estimate.

We estimate it would take somewhere in the nature of \$3 million a year for 3 years and then a \$2 million carrying cost thereafter for keeping up with the law, keeping things current, always updated. That was just off the cuff, that is what we thought it might take.

Chairman AKAKA. In your testimony, Mr. Pierce, you suggest that the VA's approach of using a systems integrator for developing IT solutions to improve the disability rating process will further delay the process of automating the rating schedule. I am interested in your thoughts on what you would recommend VA use in lieu of a systems integrator.

Mr. PIERCE. I certainly did not want that to be the intent of anything I put in my testimony. So, I do not believe it was, but I believe the opposite—that a systems integrator is absolutely necessary here in order to try to put together all of the parts and improve them individually; and they can work together. You need somebody whose job it is to do that at the high level.

We would be one small component of that in my estimation. But I would suggest that the kind of thing we do needs to be a core component; and it will be the rate-limiting step of the whole project if it is not started soon. No one could take this apart and reconstruct it in a set of tools like this quickly, but I think that an integrator is absolutely necessary.

Chairman AKAKA. My final question is for each of the witnesses and I will begin with Mr. Rollins.

Recognizing the difficulties in automating the claims adjudicating process, are there parts of the process which are more easily suited to automation than others?

Mr. Rollins.

Mr. ROLLINS. Yes, sir. As I said earlier, there are several steps that right now require human actions. Somebody has to look at a piece of evidence or a document and make a decision and then enter it into the system and implement that decision.

The application for automobile adaptive equipment right now is a carbon paper form and I do not know when the last time you filled out a carbon paper form is, but it is the only one I filled out recently. That can be automated.

The entitlement for automobile adaptive equipment is based on loss of a hand, loss of a foot and a few other things like that. So that would be very easily automated with my very limited IT experience. But, the way the system works, basically, it is a rule that this gentleman refers to—if you have got X and that equals Y and you could code that and put that into a system, it should not be that complex.

There are many benefits that that could be done with already and done quickly. While it is not huge in terms of workload, that frees what currently is a human process—that frees that human to go back to doing work that really requires decision processing—and that would improve the system overall quickly. And some of the baby steps that we need to take, that we can take now or in the relatively near future instead of waiting and dealing with the contracting and going through a 3-year upgrade and so on.

Chairman AKAKA. Mr. Pierce.

Mr. PIERCE. I have not reviewed all the parts of what would be re-engineered in the process. I cannot really speak to it, but what I could say is that one of the things that should be a fundamental goal of the process is to take what is now a rather opaque set of processes to the vet and to the people who are supporting the vet, and even to the people trying to produce a case, and make it all more transparent.

One of the great benefits these days of automation is that you can take data, put it in a form that can be shown to others and then have them put more data in, in a very controlled fashion so they do not make mistakes, do not put in data that is not useful and are prompted as to what is useful.

I would say that one of the first things that could be done is to build a first—I showed you 13 body systems here. We proposed one other component, which was a starter component for the vet themselves and the VSOs to fill out that would start that process of telling them what they needed to get together to complete their particular claim most efficiently, and it would also start the case.

So, in our proposal at the time, we suggested that is the first thing that could be built. It could be built very very quickly, put online, and at least get everybody started on the process of using these kinds of tools as part of the work flow.

Chairman AKAKA. Mr. Cox.

Mr. COX. Mr. Chairman, I believe the first step in trying to figure out how to automate the process and improve it is to ask the employees that actually do the work every day, the thousands of VBA employees that AFGC represents. And I think that I would not be able to say exactly which step to be done first, but I would say, ask our membership, go to those rank and filers that do that work every day and I am sure that they have many ideas of how to automate the process; what needs to be done first; and how to do the work better; and how to better service America's veterans. Ask the workers that do the work, sir.

Chairman AKAKA. Thank you.

Mr. Baker.

Mr. BAKER. I kind of agree with what everybody said. As far as looking at what specific procedures can be automated the easiest, I think there are plenty. It could be claims for temporary 100 percent based on hospitalization or service-connected condition or surgery of service-connected condition or the automobile grant, the housing grant, DIC. There are lots of things that are simply, if you have A, B and C you get the benefit, and it is very easy to see if you have A, B and C. Those can be automated.

These are absolutely no-brainers, for lack of a better explanation. That is where I would start if you are looking at actual end products and goals that VA does on a daily basis.

I also agree with Mr. Cox and I think there is a lot more of an answer to that if you ask the VA employees themselves. That is what I would state.

Chairman AKAKA. Thank you very much.

I want to thank our witnesses on the second panel and I want to thank all of our witnesses and thank you, Admiral, for remaining here for the entire hearing.

Your input is of great value to the Committee as we continue to work to ensure timeliness and accuracy in claims processing. We look further to working with you and look forward to some rapid improvement here, and without question, we need to work together on all levels to bring this about.

This hearing is now adjourned.

[Whereupon, at 11:26 a.m., the Committee was adjourned.]